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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**  
10 **AT SEATTLE**

11 WMI LIQUIDATING TRUST,

12 Plaintiff,

13 v.

14 FEDERAL DEPOSIT INSURANCE  
15 CORPORATION, in its corporate capacity,

16 BOARD OF GOVERNORS OF THE  
17 FEDERAL RESERVE SYSTEM,

18 and,

19 SUSAN C. ALLISON, EDWARD F. BACH,  
20 TODD H. BAKER, MELBA ANN  
21 BARTELS, ROBERT N. BATT, DAVID  
22 BECK, SEAN BECKETTI, HENRY J.  
23 BERENS, BRUCE W. BIVERT, ROBERT C.  
24 BJORKLUND, ROBERT C. BOXBERGER,  
25 ANTHONY JOSEPH BOZZUTI, GARY P.  
26 BRADY, CAREY M. BRENNAN, ALFRED  
BROOKS, CURT BROUWER, JOHN M.  
BROWNING, GREGORY G. CAMAS,  
KIMBERLY A. CANNON, GREGORY  
ALAN CARLISLE, THOMAS W. CASEY,  
GENNADIY DARAKHOVSKIY, DARYL D.  
DAVID, MARY BETH DAVIS, JAKE D.  
DOMER, DUANE DUCK, ANDREW J.

**AMENDED COMPLAINT**

AMENDED COMPLAINT

Susman Godfrey  
1201 Third Ave. Suite 3800  
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Tel. 206-516-3880

ESCHENBACH, CAMILLE EVERETT,  
WILLIAM FINZER, STEPHEN  
FORTUNATO, BRIAN T. FOSTER, PETER  
FREILINGER, KEITH FUKUI, MATTHEW  
GASPARD, MICHELE S. GRAU-IVERSEN,  
TAMMY HARRINGTON, ROBERT C.  
HILL, DEBORA D. HORVATH, JEFFREY  
JONES, RAJIV KAPOOR, KENNETH E.  
KIDO, SUZANNE R. LEHRBERGER,  
RONALD M. LOWERY, MARC MALONE,  
MICHELLE MCCARTHY, SUSAN  
MCCARTHY, JOHN P. MCMURRAY,  
RANDY MELBY, JOE ANTHONY MELO,  
ROBERT G. MERRITT, RACHELLE M.  
MILEUR, THOMAS E. MORGAN, JOHN H.  
MURPHY, CASEY NAULT, MICHAEL  
RAPAPORT, MICHAEL REYNOLDSON,  
PATRICIA ROBERTS, LAURA C. ROGERS  
RODRIGUES, LUIS P. RODRIGUEZ,  
STEPHEN J. ROTELLA, FOAD SAID,  
DAVID SCHNEIDER, JANQUELIN F.  
SCHRAG, PATRICIA SCHULTE, DANIEL  
SHANKS, CHANDAN SHARMA, SCOTT  
SHAW, GENEVIEVE SMITH, JACOB E.  
SORENSEN, STEVEN KENNETH  
STEARNS, STEVEN F. STEIN, MITCHELL  
STEVENS, RICHARD STRAUCH, JANE  
SUCHAN, JOSE O. N. TAGUNICAR ,  
CRAIG E. TALL, ANDREW TAUBER,  
RADHA THOMPSON, ANN TIERNEY,  
DAVID A. TOMLINSON, BENJAMIN  
TURK, ANTHONY F. VUOTO, JOHN  
WEBBER, BRUCE WEBER, JEFFREY P.  
WEINSTEIN, ROBERT J. WILLIAMS, JR.,  
STEPHEN E. WHITTAKER, JOHN F.  
WOODS, WEIJIA WU, KATHY H. YEU,  
MICHAEL R. ZARRO

Defendants.

Plaintiff WMI Liquidating Trust (“WMILT”), as successor in interest to  
Washington Mutual, Inc. (“WMI”), a multiple savings and loan holding company that owned

1 Washington Mutual Bank (“WMB”), and WMI Investment Corp. (together with WMI, the  
2 “Debtors”), by and through its undersigned counsel, alleges as follows:

3  
4 **NATURE OF ACTION**

5 1. WMILT brings this action to obtain a declaratory judgment that, as has  
6 already been determined by the Federal Deposit Insurance Corporation (the “FDIC”) as to  
7 certain payments, various “golden parachute” payments sought by the individual defendants  
8 are prohibited by federal regulations, absent regulatory approval. As directed by the  
9 Honorable Mary F. Walrath, United States Bankruptcy Judge, of the United States  
10 Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), who is presiding  
11 over the chapter 11 cases of the parent holding company of the largest bank to fail in United  
12 States history, WMILT brings this action against the following Defendants: (i) ninety-one  
13 (91) claimants in the underlying claims litigation, each of whom is a former employee and/or  
14 officer of WMI or WMB, as the case may be, seeking payment of the prohibited severance  
15 and other employment-related benefits from the bankruptcy estates (the “Individual  
16 Defendants”); (ii) the FDIC; and (iii) the Board of Governors of the Federal Reserve System  
17 (the “FRB”). The Individual Defendants include some of WMI’s most senior executives and  
18 members of its Executive Committee. These same Individual Defendants seek to profit as a  
19 result of the bank failure and recover from WMILT pursuant to contracts or plans providing  
20 for large – and now prohibited – “golden parachute” payments. In their proofs of claim filed  
21 in the Debtors’ bankruptcy cases in the Bankruptcy Court, the Individual Defendants have  
22 alleged that the failure of WMB and the related sale of WMB’s assets to JPMorgan Chase  
23 Bank, N.A. (“JPMC”) triggered the extraordinary payouts that they are now claiming at the  
24 expense of other creditors in the Debtors’ bankruptcy estates. On August 23, 2013, the  
25 Bankruptcy Court directed WMILT to file this “declaratory judgment action (naming the  
26 FDIC, FRB, and all claimants [in the underlying litigation in the Bankruptcy Court]) seeking

1 a determination [as to] whether WMILT is precluded [by certain federal regulations] from  
 2 paying any of the claimants if their claims are allowed.” *See* Order, dated Aug. 23, 2013, a  
 3 copy of which is annexed hereto as **Exhibit A** (the “Bankruptcy Order”).

4 2. To prevent, among other things, the distorted incentives and inequities  
 5 that would result if employees and executives were rewarded when a bank or bank holding  
 6 company (for which they were responsible) fails, Defendant FDIC has promulgated  
 7 regulations, pursuant to the Federal Deposit Insurance Act (the “FDIA”), 12 U.S.C. §§ 1811  
 8 *et seq.*, that prohibit precisely the types of payments that the Individual Defendants are  
 9 seeking. *See* 12 U.S.C. § 1828(k). One such regulation, 12 C.F.R. § 359, *et seq.* (the  
 10 “Golden Parachute Regulations”), provides that, absent regulatory approval, insured  
 11 depository institutions, like WMB, and depository institution holding companies, like WMI,  
 12 are prohibited from making certain payments to an “institution affiliated party” upon or after  
 13 the termination of that party’s employment or affiliation with the depository institution or  
 14 holding company, where the requirement to make such payments is triggered by or  
 15 contingent on the termination and such entity is in financial distress at the time of  
 16 termination.<sup>1</sup> In fact, in response to a May 30, 2013 letter from WMILT, the FDIC has  
 17 expressly advised WMILT that the Individual Defendants’ claims arising from certain of the  
 18 contracts and plans at issue are indeed “golden parachute payments” prohibited by the  
 19 Golden Parachute Regulations. *See* Ltr. from the FDIC to Brian S. Rosen, dated July 16,

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 21  
 22 <sup>1</sup> The Golden Parachute Regulations provide that “[n]o insured depository institution or depository institution  
 23 holding company shall make or agree to make any golden parachute payment” as such term is defined by the  
 24 Golden Parachute Regulations. 12 C.F.R. § 359.2. Section 359.1(f) generally defines a golden parachute  
 25 payment as “any payment (or any agreement to make any payment) in the nature of compensation by any  
 26 insured depository institution [such as WMB] or an affiliated depository institution holding company [such as  
 WMI] for the benefit of any current or former [institution affiliated party (“IAP”),]” such as the Individual  
 Defendants, which obligation is contingent on, or by its terms is payable on or after, the termination of such  
 party’s primary employment or affiliation with the institution or holding company, and is received on or after,  
 or is made in contemplation of, among other things, the insolvency of the insured depository institution or  
 depository institution holding company or the appointment of a receiver. *See* 12 C.F.R. § 359.1(f); *see also* 12  
 U.S.C. § 1828(k).

2013, a copy of which is annexed hereto as **Exhibit B** (the “FDIC Determination”). Accordingly, the FDIC has advised WMILT that WMILT is prohibited by federal law from making any payments pursuant to those contracts and plans without prior regulatory approval by the FDIC and FRB, and that making such payments could be punishable by the imposition of civil monetary penalties. *See id.* at 3.

3. WMILT also seeks a declaration regarding 12 C.F.R. § 163.39 (formerly 12 C.F.R. § 563.39) (the “Automatic Termination Regulation,” and together with the Golden Parachute Regulations, the “Federal Regulations”), which regulation requires that an employment contract between a savings association, such as WMB, and its officers and other employees must provide that, “[i]f the savings association is in default,<sup>2</sup> all obligations under the contract shall terminate as of the date of default.” 12 C.F.R. § 163.39(b)(4) (emphasis added). Indeed, if the relevant contract does not contain such an automatic termination clause, one will be deemed incorporated and read into the agreement. *See Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011) (a copy of which is annexed hereto as **Exhibit C**). In fact, in *Williams*, the FDIC obtained a judgment from this Court declaring that certain of the same contracts and plans involving certain of the Individual Defendants here are unenforceable as a result of the Automatic Termination Regulation. *See id.* This decision was affirmed on appeal to the United States Court of Appeals for the Ninth Circuit. *See Williams v. FDIC*, 492 Fed. App’x 796 (9th Cir. 2012). In plain disregard of this Court’s prior determination that certain of the contracts and plans are unenforceable under the Automatic Termination Regulation, several of the Individual Defendants who brought suit against the FDIC are now seeking to enforce those same contracts and plans against WMILT.

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<sup>2</sup> Section 3(x)(1) of the FDIA defines default as “any adjudication or other financial determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution . . . .” 12 U.S.C. § 1813(x)(1).

1                   4. As discussed more fully below, over the last four years, the Debtors,  
2 and later, WMILT, as successor in interest to the Debtors, have filed objections to proofs of  
3 claim asserted by numerous former employees of WMI and WMB, as the case may be, in the  
4 Debtors' bankruptcy cases, including the proofs of claims asserted by the Individual  
5 Defendants (the "Employee Claims"). The Debtors and WMILT have objected to the  
6 Employee Claims on a variety of bases, and, in February 2013, filed a motion seeking  
7 permission from the Bankruptcy Court to amend these objections to assert the Federal  
8 Regulations as additional defenses to the Employee Claims. Despite the FDIC's  
9 determination that any payments made pursuant to certain agreements discussed herein are  
10 prohibited by the Golden Parachute Regulations absent regulatory approval and the FDIC's  
11 explicit warning to WMILT that "any current or future settlements of golden parachute  
12 payments would result in a violation of Part 359 and potential civil money penalties," the  
13 Bankruptcy Court denied WMILT's Motion to Amend (as defined below) its claims  
14 objections to assert the Federal Regulations as a defense to the Employee Claims on grounds  
15 that, *inter alia*, the "amendment would be futile because any decision on the legal issue  
16 would not be binding on the FDIC and FRB because they are not parties to the Omnibus  
17 Objections." *See* Bankruptcy Order at 2.

18                   5. While the Bankruptcy Court declined to grant WMILT's Motion to  
19 Amend, it recognized the merits of the proposed objections by expressly acknowledging that  
20 the Bankruptcy Court has no authority to direct payment on account of the Employee Claims  
21 without either the prior written approval of the FDIC and FRB or the entry of an order  
22 declaring that the Golden Parachute Regulations and the Automatic Termination Regulation  
23 do not preclude payment on account of the Employee Claims. In order to resolve the issue,  
24 the Bankruptcy Court simultaneously ordered WMILT to file this declaratory judgment  
25 action against the FDIC, FRB and the Individual Defendants. *See* Bankruptcy Order at 2.  
26

6. Accordingly, WMILT brings this action to obtain a declaratory judgment from this Court that any payments made pursuant to certain employment contracts and benefits plans entered into between WMI or WMB, as applicable, and its respective former employees are prohibited by the Golden Parachute Regulations and, as a result, WMILT may not make such payments, unless there is prior regulatory approval from the FDIC and FRB. WMILT further seeks a declaratory judgment that certain agreements entered into between the Individual Defendants and WMB were automatically terminated pursuant to the Automatic Termination Regulation upon the seizure of WMB by the Office of Thrift Supervision (“OTS”). In addition, WMILT seeks a declaratory judgment that those Individual Defendants who previously litigated the applicability of the Automatic Termination Regulation with respect to certain contracts and plans are barred by the doctrines of *res judicata* and collateral estoppel from litigating the same issue against WMILT. To avoid further expensive and protracted litigation, and to resolve the impasse faced by the Bankruptcy Court in accord with its express order, WMILT respectfully requests a declaratory judgment be entered as soon as is practicable.

## **PARTIES**

### **I. PLAINTIFF WMILT**

7. WMILT is the successor in interest to WMI and WMI Investment Corp., formerly debtors and debtors in possession. WMILT was formed in accordance with Section 27.1 of the Seventh Amended Plan, as defined below, and was established in accordance with Treas. Reg. § 301.7701-4(d) (1996) for the purpose of resolving claims and liquidating and distributing the Debtors’ assets. The principal offices of WMILT are located at 1201 Third Ave., Suite 3000, Seattle, Washington 98101.

8. WMI was a multiple savings and loan holding company that owned WMB, a federal savings bank chartered pursuant to the Home Owners’ Loan Act, 12 U.S.C. §§ 1461-70. WMI was incorporated in the State of Washington. WMI Investment Corp. was



1 a non-banking subsidiary of WMI. At all times, WMI, WMI Investment Corp. and WMB  
2 had their principal place of business in Seattle, Washington.

3 **II. DEFENDANTS**

4 The following Defendants are all named pursuant to the Bankruptcy Order.

5 **A. FDIC & FRB**

6 9. The FDIC is an agency of the United States with its principal office in  
7 Washington D.C. and with a field office in Seattle, Washington. The FDIC is charged by law  
8 with, among other duties, administering the FDIA, as amended, and the federal deposit  
9 insurance system. *See* 12 U.S.C. § 1811(a). Pursuant to the FDIA, the FDIC promulgated  
10 the Federal Regulations. The FDIC is sued in its corporate capacity. Under FDIC  
11 regulations, 12 C.F.R. § 303.244(a)(1), the FRB must provide approval of “golden parachute  
12 payments,” as such term is defined in the Golden Parachute Regulations, before such  
13 payments can be made.

14 10. The FRB is an agency of the United States with its principal office in  
15 Washington, D.C. and with a branch in Seattle, Washington. The FRB is the federal agency  
16 responsible for the operation of the Federal Reserve System and the regulation and  
17 supervision of certain banking institutions, including depository institution holding  
18 companies. *See* 12 U.S.C. § 243. The FRB “may act in its own name and through its own  
19 attorneys in enforcing any provision of this title, regulations promulgated thereunder, or any  
20 other law or regulation, in any action, suit, or proceeding to which the [FRB] is a party and  
21 which involves the [FRB’s] regulation or supervision of any bank, bank holding  
22 company, . . . or the administration of its operations.” 12 U.S.C. § 248(p).

23 **B. WMI Employees**

24 11. Defendant Todd H. Baker is a resident of the State of California and  
25 was last known to reside at 45 El Camino Real, Berkeley, CA 94705. Defendant Baker was  
26 an employee of WMI and an officer of both WMI and WMB on and for some time before the



1 Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB  
2 (the “FDIC Receiver”), and advised that the FDIC Receiver was immediately taking  
3 possession of WMB’s assets (collectively, the “Bank Seizure”). During such period of  
4 employment, Defendant Baker’s principal place of employment with WMI was Seattle,  
5 Washington. Defendant Baker has entered into one or more of the agreements or plans at  
6 issue that specify that Washington law shall govern those agreements or plans. In connection  
7 with the Bank Seizure and WMI’s bankruptcy petition, Defendant Baker’s employment  
8 relationship with WMI and affiliation with WMB were terminated.

9           12. Defendant Alfred Brooks is a resident of the State of California and  
10 was last known to reside at 19421 Foxdale Circle, Huntington Beach, CA 92648. Defendant  
11 Brooks was an employee of WMI and an officer of both WMI and WMB on and for some  
12 time before the Bank Seizure. During such period of employment, Defendant Brooks’  
13 principal place of employment with WMI was Seattle, Washington. Defendant Brooks has  
14 entered into one or more of the agreements or plans at issue that specify that Washington law  
15 shall govern those agreements or plans. In connection with the Bank Seizure and WMI’s  
16 bankruptcy petition, Defendant Brooks’ employment relationship with WMI and affiliation  
17 with WMB were terminated.

18           13. Defendant Thomas W. Casey is a resident of the State of Texas and  
19 was last known to reside at 512 Terrell Rd., San Antonio, TX 78209. Defendant Casey was  
20 an employee of WMI and an officer of both WMI and WMB on and for some time before the  
21 Bank Seizure. During such period of employment, Defendant Casey’s principal place of  
22 employment with WMI was Seattle, Washington. Defendant Casey has entered into one or  
23 more of the agreements or plans at issue that specify that Washington law shall govern those  
24 agreements or plans. In connection with the Bank Seizure and WMI’s bankruptcy petition,  
25 Defendant Casey’s employment relationship with WMI and affiliation with WMB were  
26 terminated.

1           14. Defendant Daryl D. David is a resident of the State of Washington and  
2 was last known to reside at 561 Fortune Creek Lane, Cle Elum, WA 98922. Defendant  
3 David was an employee of WMI and an officer of both WMI and WMB on and for some  
4 time before the Bank Seizure. During such period of employment, Defendant David's  
5 principal place of employment with WMI was Seattle, Washington. Defendant David has  
6 entered into one or more of the agreements or plans at issue that specify that Washington law  
7 shall govern those agreements or plans. In connection with the Bank Seizure and WMI's  
8 bankruptcy petition, Defendant David's employment relationship with WMI and affiliation  
9 with WMB were terminated.

10           15. Defendant Debora D. Horvath is a resident of the State of Washington  
11 and was last known to reside at 18302 Ridgefield Rd. NW, Shoreline, WA 98177-3244.  
12 Defendant Horvath was an employee of WMI and an officer of both WMI and WMB on and  
13 for some time before the Bank Seizure. During such period of employment, Defendant  
14 Horvath's principal place of employment with WMI was Seattle, Washington. Defendant  
15 Horvath has entered into one or more of the agreements or plans at issue that specify that  
16 Washington law shall govern those agreements or plans. In connection with the Bank  
17 Seizure and WMI's bankruptcy petition, Defendant Horvath's employment relationship with  
18 WMI and affiliation with WMB were terminated.

19           16. Defendant John P. McMurray is a resident of the State of Washington  
20 and was last known to reside at 6929 SE 34th St., Mercer Island, WA 98040. Defendant  
21 McMurray was an employee of WMI and an officer of both WMI and WMB on and for some  
22 time before the Bank Seizure. During such period of employment, Defendant McMurray's  
23 principal place of employment with WMI was Seattle, Washington. Defendant McMurray  
24 has entered into one or more of the agreements or plans at issue that specify that Washington  
25 law shall govern those agreements or plans. In connection with the Bank Seizure and WMI's  
26

1 bankruptcy petition, Defendant McMurray's employment relationship with WMI and  
2 affiliation with WMB were terminated.

3 17. Defendant Stephen J. Rotella is a resident of the State of New York  
4 and was last known to reside at 101 Central Park W., Apt. 16G, New York, NY 10023.  
5 Defendant Rotella was an employee of WMI and an officer of both WMI and WMB on and  
6 for some time before the Bank Seizure. During such period of employment, Defendant  
7 Rotella's principal place of employment with WMI was Seattle, Washington. Defendant  
8 Rotella has entered into one or more of the agreements or plans at issue that specify that  
9 Washington law shall govern those agreements or plans. In connection with the Bank  
10 Seizure and WMI's bankruptcy petition, Defendant Rotella's employment relationship with  
11 WMI and affiliation with WMB were terminated.

12 18. Defendant David Schneider is a resident of the State of New Jersey  
13 and was last known to reside at 417 Herrontown Rd., Princeton, NJ 08540. Defendant  
14 Schneider was an employee of WMI and an officer of both WMI and WMB on and for some  
15 time before the Bank Seizure. During such period of employment, Defendant Schneider's  
16 principal place of employment with WMI was Seattle, Washington. Defendant Schneider  
17 has entered into one or more of the agreements or plans at issue that specify that Washington  
18 law shall govern those agreements or plans. In connection with the Bank Seizure and WMI's  
19 bankruptcy petition, Defendant Schneider's employment relationship with WMI and  
20 affiliation with WMB were terminated.

21 19. Defendant Craig E. Tall is a resident of the State of Washington and  
22 was last known to reside at 2005 Fabien Drive, Mercer Island, WA 98040. Defendant Tall  
23 was an employee of WMI and an officer of both WMI and WMB on and for some time  
24 before the Bank Seizure. During such period of employment, Defendant Tall's principal  
25 place of employment with WMI was Seattle, Washington. Defendant Tall has entered into  
26 one or more of the agreements or plans at issue that specify that Washington law shall govern

1 those agreements or plans. In connection with the Bank Seizure and WMI's bankruptcy  
2 petition, Defendant Tall's employment relationship with WMI and affiliation with WMB  
3 were terminated.

4           20. Defendant Anthony F. Vuoto is a resident of the State of California  
5 and was last known to reside at 1597 Via Di Salerno, Pleasanton, CA 94566-2222. As of,  
6 and for some time before, the Bank Seizure, Defendant Vuoto was an officer of both WMI  
7 and WMB. Defendant Vuoto entered into an employment contract with WMI, but, upon  
8 information and belief, he was on the payroll of, and his compensation was paid by, WMB,  
9 rather than WMI. Defendant Vuoto has entered into one or more of the agreements or plans  
10 at issue that specify that Washington law shall govern those agreements or plans. In  
11 connection with the Bank Seizure and WMI's bankruptcy petition, Defendant Vuoto's  
12 employment relationship with WMI and affiliation with WMB were terminated.

13           21. Defendant Robert J. Williams, Jr. is a resident of the State of  
14 California and was last known to reside at 2601 Cordelia Rd., Los Angeles, CA 90049. As  
15 of, and for some time before, the Bank Seizure, Defendant Williams was an officer of both  
16 WMI and WMB. Defendant Williams entered into an employment contract with WMI, but,  
17 upon information and belief, he was on the payroll of, and his compensation was paid by,  
18 WMB, rather than WMI. During such period of employment, Defendant Williams' principal  
19 place of employment was Seattle, Washington. Defendant Williams has entered into one or  
20 more of the agreements or plans at issue that specify that Washington law shall govern those  
21 agreements or plans. In connection with the Bank Seizure and WMI's bankruptcy petition,  
22 Defendant Williams' employment relationship with WMI and affiliation with WMB were  
23 terminated. Following the Bank Seizure, Defendant Williams was hired by WMI and served  
24 as President of WMI through March 19, 2012.  
25  
26

1                   **C.     WMB Employees**

2                   22.     Defendant Susan C. Allison is a resident of the State of California and  
3 was last known to reside at 4627 Longview Drive, Rocklin, CA 95677-4467. Defendant  
4 Allison was an employee of WMB on and for some time before the Bank Seizure. During  
5 such period of employment, Defendant Allison's principal place of employment with WMB  
6 was Seattle, Washington. Defendant Allison has entered into one or more of the agreements  
7 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
8 connection with the Bank Seizure on September 25, 2008, Defendant Allison's employment  
9 relationship with WMB was terminated. Defendant Allison was a plaintiff in *Williams v.*  
10 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

11                   23.     Defendant Edward F. Bach is a resident of the State of Florida and was  
12 last known to reside at 1140 W. Kesley Lane, Jacksonville, FL 32259. Defendant Bach was  
13 an employee of WMB on and for some time before the Bank Seizure. Defendant Bach has  
14 entered into one or more of the agreements or plans at issue that specify that Washington law  
15 shall govern those agreements or plans. In connection with the Bank Seizure on September  
16 25, 2008, Defendant Bach's employment relationship with WMB was terminated.

17                   24.     Defendant Melba Ann Bartels is a resident of the State of New York  
18 and was last known to reside at 2 Roxbury Rd., Garden City, NY 11530. Defendant Bartels  
19 was an employee of WMB on and for some time before the Bank Seizure. During such  
20 period of employment, Defendant Bartels' principal place of employment with WMB was  
21 Seattle, Washington. Defendant Bartels has entered into one or more of the agreements or  
22 plans at issue that specify that Washington law shall govern those agreements or plans. In  
23 connection with the Bank Seizure on September 25, 2008, Defendant Bartels' employment  
24 relationship with WMB was terminated.

25                   25.     Defendant Robert N. Batt is a resident of the State of Washington and  
26 was last known to reside at 4668 175th Ave. SE, Bellevue, WA 98006. Defendant Batt was

1 an employee of WMB on and for some time before the Bank Seizure. During such period of  
2 employment, Defendant Batt's principal place of employment with WMB was Seattle,  
3 Washington. Defendant Batt has entered into one or more of the agreements or plans at issue  
4 that specify that Washington law shall govern those agreements or plans. In connection with  
5 the Bank Seizure on September 25, 2008, Defendant Batt's employment relationship with  
6 WMB was terminated. Defendant Batt was a plaintiff in *Williams v. FDIC*, No. 09-504  
7 (RAJ) (W.D. Wash. Aug. 30, 2011).

8           26. Defendant David Beck is a resident of the State of Connecticut and  
9 was last known to reside at 71 Wahackme Rd., New Canaan, CT 06840. Defendant Beck  
10 was an employee of WMB on and for some time before the Bank Seizure. Defendant Beck  
11 has entered into one or more of the agreements or plans at issue that specify that Washington  
12 law shall govern those agreements or plans. In connection with the Bank Seizure on  
13 September 25, 2008, Defendant Beck's employment relationship with WMB was terminated.

14           27. Defendant Sean Beckett is a resident of the District of Columbia and  
15 was last known to reside at 3279 Van Hazen St., NW, Washington, DC 20015. Defendant  
16 Beckett was an employee of WMB on and for some time before the Bank Seizure. During  
17 such period of employment, Defendant Beckett's principal place of employment with WMB  
18 was Seattle, Washington. Defendant Beckett has entered into one or more of the agreements  
19 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
20 connection with the Bank Seizure on September 25, 2008, Defendant Beckett's employment  
21 relationship with WMB was terminated. Defendant Beckett was a plaintiff in *Williams v.*  
22 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

23           28. Defendant Henry J. Berens is a resident of the State of California and  
24 was last known to reside at 3005 Stafford Rd., Westlake Village, CA 91361. Defendant  
25 Berens was an employee of WMB on and for some time before the Bank Seizure. Defendant  
26 Berens has entered into one or more of the agreements or plans at issue that specify that

1 Washington law shall govern those agreements or plans. In connection with the Bank  
2 Seizure on September 25, 2008, Defendant Berens' employment relationship with WMB was  
3 terminated.

4 29. Defendant Bruce W. Bivert is a resident of the State of Pennsylvania  
5 and was last known to reside at 1 Trimont Lane 460D, Pittsburgh, PA 15211. Defendant  
6 Bivert was an employee of WMB on and for some time before the Bank Seizure. Defendant  
7 Bivert has entered into one or more of the agreements or plans at issue that specify that  
8 Washington law shall govern those agreements or plans. In connection with the Bank  
9 Seizure on September 25, 2008, Defendant Bivert's employment relationship with WMB was  
10 terminated.

11 30. Defendant Robert C. Bjorklund is a resident of the State of  
12 Washington and was last known to reside at 1710 N. Fife St., Tacoma, WA 98406.  
13 Defendant Bjorklund was an employee of WMB on and for some time before the Bank  
14 Seizure. During such period of employment, Defendant Bjorklund's principal place of  
15 employment with WMB was Seattle, Washington. Defendant Bjorklund has entered into one  
16 or more of the agreements or plans at issue that specify that Washington law shall govern  
17 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
18 Defendant Bjorklund's employment relationship with WMB was terminated. Defendant  
19 Bjorklund was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30,  
20 2011).

21 31. Defendant Robert C. Boxberger is a resident of the State of California  
22 and was last known to reside at 1520 Via Di Salerno, Pleasanton, CA 94556. Defendant  
23 Boxberger was an employee of WMB for some time before the Bank Seizure. Defendant  
24 Boxberger's employment relationship with WMB was terminated on January 31, 2008.

25 32. Defendant Anthony Joseph Bozzuti is a resident of the State of  
26 Washington and was last known to reside at 3832 48th Ave. NE, Seattle, WA 98105.



1 Defendant Bozzuti was an employee of WMB on and for some time before the Bank Seizure.  
2 During such period of employment, Defendant Bozzuti's principal place of employment with  
3 WMB was Seattle, Washington. Defendant Bozzuti has entered into one or more of the  
4 agreements or plans at issue that specify that Washington law shall govern those agreements  
5 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Bozzuti's  
6 employment relationship with WMB was terminated.

7 33. Defendant Gary P. Brady is a resident of the State of Washington and  
8 was last known to reside at 8410 NE 27th Place, Clyde Hill, WA 98004. Defendant Brady  
9 was an employee of WMB on and for some time before the Bank Seizure. During such  
10 period of employment, Defendant Brady's principal place of employment with WMB was  
11 Seattle, Washington. Defendant Brady has entered into one or more of the agreements or  
12 plans at issue that specify that Washington law shall govern those agreements or plans. In  
13 connection with the Bank Seizure on September 25, 2008, Defendant Brady's employment  
14 relationship with WMB was terminated. Since the Bank Seizure, Defendant Brady has been  
15 employed by JPMC.

16 34. Defendant Carey M. Brennan is a resident of the State of Washington  
17 and was last known to reside at 10205 NE 60th St., Kirkland, WA 98033. Defendant  
18 Brennan was an employee of WMB on and for some time before the Bank Seizure. During  
19 such period of employment, Defendant Brennan's principal place of employment with WMB  
20 was Seattle, Washington. Defendant Brennan has entered into one or more of the agreements  
21 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
22 connection with the Bank Seizure on September 25, 2008, Defendant Brennan's employment  
23 relationship with WMB was terminated.

24 35. Defendant Curt Brouwer is a resident of the State of Washington and  
25 was last known to reside at 23933 W. Woodway Lane, Woodway, WA 98020. Defendant  
26 Brouwer was an employee of WMB on and for some time before the Bank Seizure. During

1 such period of employment, Defendant Brouwer's principal place of employment with WMB  
2 was Seattle, Washington. Defendant Brouwer has entered into one or more of the  
3 agreements or plans at issue that specify that Washington law shall govern those agreements  
4 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Brouwer's  
5 employment relationship with WMB was terminated.

6 36. Defendant John M. Browning is a resident of the State of Washington  
7 and was last known to reside at 8145 Eleanor Place, Bainbridge Island, WA 98110.  
8 Defendant Browning was an employee of WMB on and for some time before the Bank  
9 Seizure. During such period of employment, Defendant Browning's principal place of  
10 employment with WMB was Seattle, Washington. Defendant Browning has entered into one  
11 or more of the agreements or plans at issue that specify that Washington law shall govern  
12 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
13 Defendant Browning's employment relationship with WMB was terminated.

14 37. Defendant Gregory G. Camas is a resident of the State of New Jersey  
15 and was last known to reside at 205 Hudson St., No. 1410, Hoboken, NJ 07030. Defendant  
16 Camas was an employee of WMB on and for some time before the Bank Seizure. Defendant  
17 Camas has entered into one or more of the agreements or plans at issue that specify that  
18 Washington law shall govern those agreements or plans. In connection with the Bank  
19 Seizure on September 25, 2008, Defendant Camas' employment relationship with WMB was  
20 terminated. Upon information and belief, since the Bank Seizure, Defendant Brady has been  
21 and is currently employed by JPMC.

22 38. Defendant Kimberly A. Cannon is a resident of the State of  
23 Washington and was last known to reside at 3907 El Cimo Lane NE, Bainbridge Island, WA  
24 98110. Defendant Cannon was an employee of WMB on and for some time before the Bank  
25 Seizure. During such period of employment, Defendant Cannon's principal place of  
26 employment with WMB was Seattle, Washington. Defendant Cannon has entered into one

1 or more of the agreements or plans at issue that specify that Washington law shall govern  
2 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
3 Defendant Cannon's employment relationship with WMB was terminated.

4 39. Defendant Gregory Alan Carlisle is a resident of the State of  
5 Pennsylvania and was last known to reside at 8816 Ridge Ave. No. 4, Philadelphia, PA  
6 19103. Defendant Carlisle was an employee of WMB on and for some time before the Bank  
7 Seizure. During such period of employment, Defendant Carlisle entered into one or more of  
8 the agreements or plans at issue that specify that Washington law shall govern those  
9 agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
10 Defendant Carlisle's employment relationship with WMB was terminated.

11 40. Defendant Gennadiy Darakhovskiy is a resident of the State of  
12 Washington and was last known to reside at 24463 SE 46th Place, Issaquah, WA 98029.  
13 Defendant Darakhovskiy was an employee of WMB for some time before the Bank Seizure.  
14 During such period of employment, Defendant Darakhovskiy's principal place of  
15 employment with WMB was Seattle, Washington. Defendant Darakhovskiy's employment  
16 relationship with WMB was terminated on August 15, 2008.

17 41. Defendant Mary Beth Davis is a resident of the State of California and  
18 was last known to reside at 349 Merrilee Place, Danville, CA 94526. Defendant Davis was  
19 an employee of WMB on and for some time before the Bank Seizure. Defendant Davis has  
20 entered into one or more of the agreements or plans at issue that specify that Washington law  
21 shall govern those agreements or plans. In connection with the Bank Seizure on September  
22 25, 2008, Defendant Davis' employment relationship with WMB was terminated. Defendant  
23 Davis was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

24 42. Defendant Jake D. Domer is a resident of the State of Washington and  
25 was last known to reside at 622 9th Ave. South, Kirkland, WA 98033. Defendant Domer  
26 was an employee of WMB on and for some time before the Bank Seizure. During such

1 period of employment, Defendant Domer's principal place of employment with WMB was  
2 Seattle, Washington. Defendant Domer has entered into one or more of the agreements or  
3 plans at issue that specify that Washington law shall govern those agreements or plans. In  
4 connection with the Bank Seizure on September 25, 2008, Defendant Domer's employment  
5 relationship with WMB was terminated. Defendant Domer was a plaintiff in *Williams v.*  
6 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

7 43. Defendant Duane Duck is a resident of the State of California and was  
8 last known to reside at 60 Rose Ave., Mill Valley, CA 94941. Defendant Duck was an  
9 employee of WMB on and for some time before the Bank Seizure. During such period of  
10 employment, Defendant Duck's principal place of employment with WMB was Seattle,  
11 Washington. Defendant Duck has entered into one or more of the agreements or plans at  
12 issue that specify that Washington law shall govern those agreements or plans. In connection  
13 with the Bank Seizure on September 25, 2008, Defendant Duck's employment relationship  
14 with WMB was terminated.

15 44. Defendant Andrew J. Eschenbach is a resident of the State of  
16 Wisconsin and was last known to reside at 1402 E. 10th St., Merrill, WI 54452. Defendant  
17 Eschenbach was an employee of WMB on and for some time before the Bank Seizure.  
18 During such period of employment, Defendant Eschenbach's principal place of employment  
19 with WMB was Seattle, Washington. Defendant Eschenbach has entered into one or more of  
20 the agreements or plans at issue that specify that Washington law shall govern those  
21 agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
22 Defendant Eschenbach's employment relationship with WMB was terminated.

23 45. Defendant Camille Everett is a resident of the State of California and  
24 was last known to reside at 12306 Clover Ave., Los Angeles, CA 90066. Defendant Everett  
25 was an employee of WMB on and for some time before the Bank Seizure. Defendant Everett  
26 has entered into one or more of the agreements or plans at issue that specify that Washington

1 law shall govern those agreements or plans. In connection with the Bank Seizure on  
2 September 25, 2008, Defendant Everett's employment relationship with WMB was  
3 terminated. Defendant Everett was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D.  
4 Wash. Aug. 30, 2011).

5 46. Defendant William Finzer is a resident of the State of Washington and  
6 was last known to reside at 9220 SE 59th St., Seattle, WA 98040. Defendant Finzer was an  
7 employee of WMB on and for some time before the Bank Seizure. During such period of  
8 employment, Defendant Finzer's principal place of employment with WMB was Seattle,  
9 Washington. Defendant Finzer has entered into one or more of the agreements or plans at  
10 issue that specify that Washington law shall govern those agreements or plans. In connection  
11 with the Bank Seizure on September 25, 2008, Defendant Finzer's employment relationship  
12 with WMB was terminated.

13 47. Defendant Stephen Fortunato is a resident of the State of New Jersey  
14 and was last known to reside at 31 Governors Lane, Princeton, NJ 08540. Defendant  
15 Fortunato was an employee of WMB on and for some time before the Bank Seizure.  
16 Defendant Fortunato has entered into one or more of the agreements or plans at issue that  
17 specify that Washington law shall govern those agreements or plans. In connection with the  
18 Bank Seizure on September 25, 2008, Defendant Fortunato's employment relationship with  
19 WMB was terminated.

20 48. Defendant Brian T. Foster is a resident of the State of Washington and  
21 was last known to reside at 563 Park Ave. NE, Bainbridge Island, WA 98110. Defendant  
22 Foster was an employee of WMB on and for some time before the Bank Seizure. During  
23 such period of employment, Defendant Foster's principal place of employment with WMB  
24 was Seattle, Washington. Defendant Foster has entered into one or more of the agreements  
25 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
26 connection with the Bank Seizure on September 25, 2008, Defendant Foster's employment

1 relationship with WMB was terminated. Defendant Foster was a plaintiff in *Williams v.*  
2 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

3 49. Defendant Peter Freilingner is a resident of the United Kingdom and  
4 was last known to reside at 9 Circus St., Greenwich, UK SE10 8SG. Defendant Freilingner  
5 was an employee of WMB on and for some time before the Bank Seizure. During such  
6 period of employment, Defendant Freilingner's principal place of employment with WMB  
7 was Seattle, Washington. Defendant Freilingner has entered into one or more of the  
8 agreements or plans at issue that specify that Washington law shall govern those agreements  
9 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant  
10 Freilingner's employment relationship with WMB was terminated. Defendant Freilingner was  
11 a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

12 50. Defendant Keith Fukui is a resident of the State of California and was  
13 last known to reside at 2317 Winged Foot Rd., Half Moon Bay, CA 94019. Defendant  
14 Fukui was an employee of WMB on and for some time before the Bank Seizure. Defendant  
15 Fukui has entered into one or more of the agreements or plans at issue that specify that  
16 Washington law shall govern those agreements or plans. In connection with the Bank  
17 Seizure on September 25, 2008, Defendant Fukui's employment relationship with WMB was  
18 terminated. Defendant Fukui was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D.  
19 Wash. Aug. 30, 2011).

20 51. Defendant Matthew Gaspard is a resident of the State of Washington  
21 and was last known to reside at 13719 Agate Beach Rd., Anderson Island, WA 98303.  
22 Defendant Gaspard was an employee of WMB on and for some time before the Bank  
23 Seizure. During such period of employment, Defendant Gaspard's principal place of  
24 employment with WMB was Seattle, Washington. Defendant Gaspard has entered into one  
25 or more of the agreements or plans at issue that specify that Washington law shall govern  
26

1 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
2 Defendant Gaspard's employment relationship with WMB was terminated.

3 52. Defendant Michele S. Grau-Iversen is a resident of the State of Nevada  
4 and was last known to reside at 796 Tyner Way, Incline Village, NV 89451. Defendant  
5 Grau-Iversen was an employee of WMB on and for some time before the Bank Seizure.  
6 Defendant Grau-Iversen has entered into one or more of the agreements or plans at issue that  
7 specify that Washington law shall govern those agreements or plans. In connection with the  
8 Bank Seizure on September 25, 2008, Defendant Grau-Iversen's employment relationship  
9 with WMB was terminated. Defendant Grau-Iversen was a plaintiff in *Williams v. FDIC*,  
10 No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

11 53. Defendant Tammy Harrington is a resident of the State of Georgia and  
12 was last known to reside at 405 Squire Drive, Ellenwood, GA 30294. Defendant Harrington  
13 was an employee of WMB on and for some time before the Bank Seizure. Defendant  
14 Harrington has entered into one or more of the agreements or plans at issue that specify that  
15 Washington law shall govern those agreements or plans. In connection with the Bank  
16 Seizure on September 25, 2008, Defendant Harrington's employment relationship with  
17 WMB was terminated.

18 54. Defendant Robert C. Hill is a resident of the State of Texas and was  
19 last known to reside at 7602 Lincoln Court, Colleyville, TX 76034. Defendant Hill was an  
20 employee of WMB on and for some time before the Bank Seizure. Defendant Hill has  
21 entered into one or more of the agreements or plans at issue that specify that Washington law  
22 shall govern those agreements or plans. In connection with the Bank Seizure on September  
23 25, 2008, Defendant Hill's employment relationship with WMB was terminated. Defendant  
24 Hill was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

25 55. Defendant Jeffrey Jones is a resident of the State of California and was  
26 last known to reside at 5798 Snake Rd., Oakland, CA 94611. Defendant Jones was an



1 employee of WMB on and for some time before the Bank Seizure. Defendant Jones has  
2 entered into one or more of the agreements or plans at issue that specify that Washington law  
3 shall govern those agreements or plans. In connection with the Bank Seizure on September  
4 25, 2008, Defendant Jones' employment relationship with WMB was terminated.

5 56. Defendant Rajiv Kapoor is a resident of the State of California and  
6 was last known to reside at 1424 Allanmere Drive, San Ramon, CA 94582. Defendant  
7 Kapoor was an employee of WMB on and for some time before the Bank Seizure.  
8 Defendant Kapoor has entered into one or more of the agreements or plans at issue that  
9 specify that Washington law shall govern those agreements or plans. In connection with the  
10 Bank Seizure on September 25, 2008, Defendant Kapoor's employment relationship with  
11 WMB was terminated. Defendant Kapoor was a plaintiff in *Williams v. FDIC*, No. 09-504  
12 (RAJ) (W.D. Wash. Aug. 30, 2011).

13 57. Defendant Kenneth E. Kido is a resident of the State of Maryland and  
14 was last known to reside at 5208 Carlton St., Bethesda, MD 20816. Defendant Kido was an  
15 employee of WMB on and for some time before the Bank Seizure. During such period of  
16 employment, Defendant Kido's principal place of employment with WMB was Seattle,  
17 Washington. Defendant Kido has entered into one or more of the agreements or plans at  
18 issue that specify that Washington law shall govern those agreements or plans. In connection  
19 with the Bank Seizure on September 25, 2008, Defendant Kido's employment relationship  
20 with WMB was terminated. Defendant Kido was a plaintiff in *Williams v. FDIC*, No. 09-504  
21 (RAJ) (W.D. Wash. Aug. 30, 2011).

22 58. Defendant Suzanne R. Lehrberger is a resident of the State of Texas  
23 and was last known to reside at 303 Robin Hood Court, Irving, TX 75061. Defendant  
24 Lehrberger was an employee of WMB on and for some time before the Bank Seizure.  
25 Defendant Lehrberger has entered into one or more of the agreements or plans at issue that  
26 specify that Washington law shall govern those agreements or plans. In connection with the

1 Bank Seizure on September 25, 2008, Defendant Lehrberger's employment relationship with  
2 WMB was terminated.

3 59. Defendant Ronald M. Lowery is a resident of the State of Texas and  
4 was last known to reside at 28007 Carmel Valley, Boerne, TX 78015. Defendant Lowery  
5 was an employee of WMB on and for some time before the Bank Seizure. During such  
6 period of employment, Defendant Lowery's principal place of employment with WMB was  
7 Seattle, Washington. Defendant Lowery has entered into one or more of the agreements or  
8 plans at issue that specify that Washington law shall govern those agreements or plans. In  
9 connection with the Bank Seizure on September 25, 2008, Defendant Lowery's employment  
10 relationship with WMB was terminated. Defendant Lowery was a plaintiff in *Williams v.*  
11 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

12 60. Defendant Marc Malone is a resident of the State of Washington and  
13 was last known to reside at 7510 34th Ave. NE, Seattle, WA 98115. Defendant Malone was  
14 an employee of WMB on and for some time before the Bank Seizure. During such period of  
15 employment, Defendant Malone's principal place of employment with WMB was Seattle,  
16 Washington. Defendant Malone has entered into one or more of the agreements or plans at  
17 issue that specify that Washington law shall govern those agreements or plans. In connection  
18 with the Bank Seizure on September 25, 2008, Defendant Malone's employment relationship  
19 with WMB was terminated.

20 61. Defendant Michelle McCarthy is a resident of the State of Illinois and  
21 was last known to reside at 2550 N. Lakeview Ave., Apt. N406, Chicago, IL 60614.  
22 Defendant Michelle McCarthy was an employee of WMB on and for some time before the  
23 Bank Seizure. During such period of employment, Defendant Michelle McCarthy's principal  
24 place of employment with WMB was Seattle, Washington. Defendant Michelle McCarthy  
25 has entered into one or more of the agreements or plans at issue that specify that Washington  
26 law shall govern those agreements or plans. In connection with the Bank Seizure on

1 September 25, 2008, Defendant Michelle McCarthy's employment relationship with WMB  
2 was terminated. Defendant Michelle McCarthy was a plaintiff in *Williams v. FDIC*, No. 09-  
3 504 (RAJ) (W.D. Wash. Aug. 30, 2011).

4 62. Defendant Susan McCarthy is a resident of the State of South Carolina  
5 and was last known to reside at 102 Iroquois St., Darlington, SC 29532. Defendant Susan  
6 McCarthy was an employee of WMB on and for some time before the Bank Seizure. During  
7 such period of employment, Defendant Susan McCarthy's principal place of employment  
8 with WMB was Seattle, Washington. Defendant Susan McCarthy has entered into one or  
9 more of the agreements or plans at issue that specify that Washington law shall govern those  
10 agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
11 Defendant Susan McCarthy's employment relationship with WMB was terminated.

12 63. Defendant Randy Melby is a resident of the State of Washington and  
13 was last known to reside at 5802 W. Mercer Way, Mercer Island, WA 98040. Defendant  
14 Melby was an employee of WMB on and for some time before the Bank Seizure. During  
15 such period of employment, Defendant Melby's principal place of employment with WMB  
16 was Seattle, Washington. Defendant Melby has entered into one or more of the agreements  
17 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
18 connection with the Bank Seizure on September 25, 2008, Defendant Melby's employment  
19 relationship with WMB was terminated. Defendant Melby was a plaintiff in *Williams v.*  
20 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

21 64. Defendant Joe Anthony Melo is a resident of the State of California  
22 and was last known to reside at 818 Devoto St., Mountain View, CA 94041. Defendant  
23 Melo was an employee of WMB on and for some time before the Bank Seizure. In  
24 connection with the Bank Seizure on September 25, 2008, Defendant Melo's employment  
25 relationship with WMB was terminated.  
26

1           65. Defendant Robert G. Merritt is a resident of the State of California and  
2 was last known to reside at 1040 Galvin St., Oakland, CA 94602. Defendant Merritt was an  
3 employee of WMB for some time before the Bank Seizure. Defendant Merritt's employment  
4 relationship with WMB was terminated on October 3, 2005.

5           66. Defendant Rachelle M. Mileur is a resident of the State of Washington  
6 and was last known to reside at 624 14th Ave. East, Seattle, WA 98112. Defendant Mileur  
7 was an employee of WMB on and for some time before the Bank Seizure. During such  
8 period of employment, Defendant Mileur's principal place of employment with WMB was  
9 Seattle, Washington. Defendant Mileur has entered into one or more of the agreements or  
10 plans at issue that specify that Washington law shall govern those agreements or plans. In  
11 connection with the Bank Seizure on September 25, 2008, Defendant Mileur's employment  
12 relationship with WMB was terminated.

13           67. Defendant Thomas E. Morgan is a resident of the State of California  
14 and was last known to reside at 20340 Big Rock Drive, Malibu, CA 90265. Defendant  
15 Morgan was an employee of WMB on and for some time before the Bank Seizure. During  
16 such period of employment, Defendant Morgan's principal place of employment with WMB  
17 was Seattle, Washington. Defendant Morgan has entered into one or more of the agreements  
18 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
19 connection with the Bank Seizure on September 25, 2008, Defendant Morgan's employment  
20 relationship with WMB was terminated.

21           68. Defendant John H. Murphy is a resident of the State of Texas and was  
22 last known to reside at 10043 Bordley, Houston, TX 77042. Defendant Murphy was an  
23 employee of WMB on and for some time before the Bank Seizure. Defendant Murphy has  
24 entered into one or more of the agreements or plans at issue that specify that Washington law  
25 shall govern those agreements or plans. In connection with the Bank Seizure on September  
26 25, 2008, Defendant Murphy's employment relationship with WMB was terminated.

1 Defendant Murphy was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug.  
2 30, 2011).

3 69. Defendant Casey Nault is a resident of the State of Illinois and was last  
4 known to reside at 619 S. Sunnyside Ave., Elmhurst, IL 60126. Defendant Nault was an  
5 employee of WMB on and for some time before the Bank Seizure. During such period of  
6 employment, Defendant Nault's principal place of employment with WMB was Seattle,  
7 Washington. Defendant Nault has entered into one or more of the agreements or plans at  
8 issue that specify that Washington law shall govern those agreements or plans. In connection  
9 with the Bank Seizure on September 25, 2008, Defendant Nault's employment relationship  
10 with WMB was terminated.

11 70. Defendant Michael Rapaport is a resident of the State of California  
12 and was last known to reside at 744 Duncan St., San Francisco, CA 94131. Defendant  
13 Rapaport was an employee of WMB for some time before the Bank Seizure. Defendant  
14 Rapaport's employment relationship with WMB was terminated on June 2, 2008.

15 71. Defendant Michael Reynoldson is a resident of the State of  
16 Washington and was last known to reside at 4421 51st Ave. NE, Seattle, WA 98105.  
17 Defendant Reynoldson was an employee of WMB on and for some time before the Bank  
18 Seizure. During such period of employment, Defendant Reynoldson's principal place of  
19 employment with WMB was Seattle, Washington. Defendant Reynoldson has entered into  
20 one or more of the agreements or plans at issue that specify that Washington law shall govern  
21 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
22 Defendant Reynoldson's employment relationship with WMB was terminated.

23 72. Defendant Patricia Roberts is a resident of the State of Texas and was  
24 last known to reside at 8 Staff Post Rd., Fort Sam Houston, TX 78234. Defendant Roberts  
25 was an employee of WMB on and for some time before the Bank Seizure. Defendant  
26 Roberts has entered into one or more of the agreements or plans at issue that specify that

1 Washington law shall govern those agreements or plans. In connection with the Bank  
2 Seizure on September 25, 2008, Defendant Roberts' employment relationship with WMB  
3 was terminated.

4 73. Defendant Laura C. Rogers Rodrigues is a resident of the State of  
5 California and was last known to reside at 210 Summerford Circle, San Ramon, CA 94583-  
6 4400. Defendant Rodrigues was an employee of WMB on and for some time before the  
7 Bank Seizure. Defendant Rodrigues has entered into one or more of the agreements or plans  
8 at issue that specify that Washington law shall govern those agreements or plans. In  
9 connection with the Bank Seizure on September 25, 2008, Defendant Rodrigues'  
10 employment relationship with WMB was terminated.

11 74. Upon information and belief, Defendant Luis P. Rodriguez is a  
12 resident of the State of California and resides at 315 Wilde Ave., San Francisco, CA 94134-  
13 2251. Defendant Rodriguez was an employee of WMB on and for some time before the  
14 Bank Seizure. Defendant Rodriguez has entered into one or more of the agreements or plans  
15 at issue that specify that Washington law shall govern those agreements or plans. In  
16 connection with the Bank Seizure on September 25, 2008, Defendant Rodriguez's  
17 employment relationship with WMB was terminated.

18 75. Defendant Foad Said is a resident of the State of New Jersey and was  
19 last known to reside at 6 Prospect Ave., Cliffside Park, NJ 07010. Defendant Said was an  
20 employee of WMB on and for some time before the Bank Seizure. Defendant Said has  
21 entered into one or more of the agreements or plans at issue that specify that Washington law  
22 shall govern those agreements or plans. In connection with the Bank Seizure on September  
23 25, 2008, Defendant Said's employment relationship with WMB was terminated.

24 76. Defendant Janquelin F. Schrag is a resident of the State of Washington  
25 and was last known to reside at 23400 39th Ave. W., Brier, WA 98036. Defendant Schrag  
26 was an employee of WMB on and for some time before the Bank Seizure. During such

1 period of employment, Defendant Schrag's principal place of employment with WMB was  
2 Seattle, Washington. Defendant Schrag has entered into one or more of the agreements or  
3 plans at issue that specify that Washington law shall govern those agreements or plans. In  
4 connection with the Bank Seizure on September 25, 2008, Defendant Schrag's employment  
5 relationship with WMB was terminated. Defendant Schrag was a plaintiff in *Williams v.*  
6 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

7 77. Defendant Patricia Schulte is a resident of the State of California and  
8 was last known to reside at 5501 Golden Gate Ave., Oakland, CA 94618. Defendant Schulte  
9 was an employee of WMB on and for some time before the Bank Seizure. During such  
10 period of employment, Defendant Schulte's principal place of employment with WMB was  
11 Seattle, Washington. Defendant Schulte has entered into one or more of the agreements or  
12 plans at issue that specify that Washington law shall govern those agreements or plans. In  
13 connection with the Bank Seizure on September 25, 2008, Defendant Schulte's employment  
14 relationship with WMB was terminated.

15 78. Defendant Daniel Shanks is a resident of the State of California and  
16 was last known to reside at 123 Mission St., San Francisco, CA 94105. Defendant Shanks  
17 was an employee of WMB for some time before the Bank Seizure. Defendant Shanks'  
18 employment relationship with WMB was terminated on October 1, 2005.

19 79. Defendant Chandan Sharma is a resident of the State of Washington  
20 and was last known to reside at 5876 NW Lac Leman Drive, Issaquah, WA 98027.  
21 Defendant Sharma was an employee of WMB on and for some time before the Bank Seizure.  
22 During such period of employment, Defendant Sharma's principal place of employment with  
23 WMB was Seattle, Washington. Defendant Sharma has entered into one or more of the  
24 agreements or plans at issue that specify that Washington law shall govern those agreements  
25 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Sharma's  
26 employment relationship with WMB was terminated.



1           80. Defendant Scott Shaw is a resident of the State of Washington and was  
2 last known to reside at 29826 NE 178th Place, Duvall, WA 98019. Defendant Shaw was an  
3 employee of WMB on and for some time before the Bank Seizure. During such period of  
4 employment, Defendant Shaw's principal place of employment with WMB was Seattle,  
5 Washington. Defendant Shaw has entered into one or more of the agreements or plans at  
6 issue that specify that Washington law shall govern those agreements or plans. In connection  
7 with the Bank Seizure on September 25, 2008, Defendant Shaw's employment relationship  
8 with WMB was terminated. Defendant Shaw was a plaintiff in *Williams v. FDIC*, No. 09-  
9 504 (RAJ) (W.D. Wash. Aug. 30, 2011).

10           81. Defendant Genevieve Smith is a resident of the State of California and  
11 was last known to reside at 4465 Ten Mile House TRL, Chico, CA 95928. Defendant Smith  
12 was an employee of WMB on and for some time before the Bank Seizure. During such  
13 period of employment, Defendant Smith's principal place of employment with WMB was  
14 Seattle, Washington. Defendant Smith has entered into one or more of the agreements or  
15 plans at issue that specify that Washington law shall govern those agreements or plans. In  
16 connection with the Bank Seizure on September 25, 2008, Defendant Smith's employment  
17 relationship with WMB was terminated.

18           82. Defendant Jacob E. Sorenson is a resident of the State of California  
19 and was last known to reside at 1281 Vallejo St., No. 4, San Francisco, CA 94109.  
20 Defendant Sorenson was an employee of WMB on and for some time before the Bank  
21 Seizure. Defendant Sorenson has entered into one or more of the agreements or plans at  
22 issue that specify that Washington law shall govern those agreements or plans. In connection  
23 with the Bank Seizure on September 25, 2008, Defendant Sorenson's employment  
24 relationship with WMB was terminated. Defendant Sorensen was a plaintiff in *Williams v.*  
25 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).  
26

1           83. Defendant Steven Kenneth Stearns is a resident of the United  
2 Kingdom and was last known to reside at 106 110 Hallam St., London, UK W1W SHG.  
3 Defendant Stearns was an employee of WMB on and for some time before the Bank Seizure.  
4 During such period of employment, Defendant Stearns' principal place of employment with  
5 WMB was Seattle, Washington. Defendant Stearns has entered into one or more of the  
6 agreements or plans at issue that specify that Washington law shall govern those agreements  
7 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Stearns'  
8 employment relationship with WMB was terminated.

9           84. Defendant Steven F. Stein is a resident of the State of California and  
10 was last known to reside at 14121 Recuerdo Drive, Del Mar, CA 92014. Defendant Stein  
11 was an employee of WMB on and for some time before the Bank Seizure. During such  
12 period of employment, Defendant Stein's principal place of employment with WMB was  
13 Seattle, Washington. Defendant Stein has entered into one or more of the agreements or  
14 plans at issue that specify that Washington law shall govern those agreements or plans. In  
15 connection with the Bank Seizure on September 25, 2008, Defendant Stein's employment  
16 relationship with WMB was terminated.

17           85. Defendant Mitchell Stevens is a resident of the State of Virginia and  
18 was last known to reside at 4611 37th St. N., Arlington, VA 22207. Defendant Stevens was  
19 an employee of WMB on and for some time before the Bank Seizure. Defendant Stevens has  
20 entered into one or more of the agreements or plans at issue that specify that Washington law  
21 shall govern those agreements or plans. In connection with the Bank Seizure on September  
22 25, 2008, Defendant Stevens's employment relationship with WMB was terminated.  
23 Defendant Stevens was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug.  
24 30, 2011).

25           86. Defendant Richard Strauch is a resident of the State of California and  
26 was last known to reside at 1446 Nighthawk Place, Santa Rosa, CA 95409. Defendant

1 Strauch was an employee of WMB on and for some time before the Bank Seizure.  
2 Defendant Strauch has entered into one or more of the agreements or plans at issue that  
3 specify that Washington law shall govern those agreements or plans. In connection with the  
4 Bank Seizure on September 25, 2008, Defendant Strauch's employment relationship with  
5 WMB was terminated.

6 87. Defendant Jane Suchan is a resident of the State of Washington and  
7 was last known to reside at 6012 34th Ave. NE, Seattle, WA 98115. Defendant Suchan was  
8 an employee of WMB on and for some time before the Bank Seizure. During such period of  
9 employment, Defendant Suchan's principal place of employment with WMB was Seattle,  
10 Washington. Defendant Suchan has entered into one or more of the agreements or plans at  
11 issue that specify that Washington law shall govern those agreements or plans. In connection  
12 with the Bank Seizure on September 25, 2008, Defendant Suchan's employment relationship  
13 with WMB was terminated. Defendant Suchan was a plaintiff in *Williams v. FDIC*, No. 09-  
14 504 (RAJ) (W.D. Wash. Aug. 30, 2011).

15 88. Defendant Jose O. N. Tagunicar is a resident of the State of California  
16 and was last known to reside at 123 Mission St., San Francisco, CA 94105. Defendant  
17 Tagunicar was an employee of WMB for some time before the Bank Seizure. Defendant  
18 Tagunicar's employment relationship with WMB was terminated on May 15, 2006.

19 89. Defendant Andrew Tauber is a resident of the State of Pennsylvania  
20 and was last known to reside at 600 Winfield Way, Chester Springs, PA 19425. Defendant  
21 Tauber was an employee of WMB on and for some time before the Bank Seizure. Defendant  
22 Tauber has entered into one or more of the agreements or plans at issue that specify that  
23 Washington law shall govern those agreements or plans. In connection with the Bank  
24 Seizure on September 25, 2008, Defendant Tauber's employment relationship with WMB  
25 was terminated. Defendant Tauber was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ)  
26 (W.D. Wash. Aug. 30, 2011).

1           90. Defendant Radha Thompson is a resident of the State of Texas and  
2 was last known to reside at 4848 Lemmon Ave., Suite 100, Highland Park, TX 75219.  
3 Defendant Thompson was an employee of WMB on and for some time before the Bank  
4 Seizure. During such period of employment, Defendant Thompson's principal place of  
5 employment with WMB was Seattle, Washington. Defendant Thompson has entered into  
6 one or more of the agreements or plans at issue that specify that Washington law shall govern  
7 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
8 Defendant Thompson's employment relationship with WMB was terminated. Defendant  
9 Thompson was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30,  
10 2011).

11           91. Defendant Ann Tierney is a resident of the State of Washington and  
12 was last known to reside at 1814 27th Ave. W, Seattle, WA 98199. Defendant Tierney was  
13 an employee of WMB on and for some time before the Bank Seizure. During such period of  
14 employment, Defendant Tierney's principal place of employment with WMB was Seattle,  
15 Washington. Defendant Tierney has entered into one or more of the agreements or plans at  
16 issue that specify that Washington law shall govern those agreements or plans. In connection  
17 with the Bank Seizure on September 25, 2008, Defendant Tierney's employment relationship  
18 with WMB was terminated. Defendant Tierney was a plaintiff in *Williams v. FDIC*, No. 09-  
19 504 (RAJ) (W.D. Wash. Aug. 30, 2011).

20           92. Defendant David A. Tomlinson is a resident of the State of California  
21 and was last known to reside at 65 Alpine Terrace, San Francisco, CA 94117. Defendant  
22 Tomlinson was an employee of WMB on and for some time before the Bank Seizure.  
23 Defendant Tomlinson has entered into one or more of the agreements or plans at issue that  
24 specify that Washington law shall govern those agreements or plans. In connection with the  
25 Bank Seizure on September 25, 2008, Defendant Tomlinson's employment relationship with  
26 WMB was terminated.

1           93. Defendant Benjamin Turk is a resident of the State of Texas and was  
2 last known to reside at 29 Wimberley Court, Dallas, TX 75229. Defendant Turk was an  
3 employee of WMB on and for some time before the Bank Seizure. Defendant Turk has  
4 entered into one or more of the agreements or plans at issue that specify that Washington law  
5 shall govern those agreements or plans. In connection with the Bank Seizure on September  
6 25, 2008, Defendant Turk's employment relationship with WMB was terminated.

7           94. Defendant John Webber is a resident of the State of Pennsylvania and  
8 was last known to reside at 603 W. Rosedale Ave., West Chester, PA 19382. Defendant  
9 Webber was an employee of WMB for some time before the Bank Seizure. Defendant  
10 Webber's employment relationship with WMB was terminated on June 30, 2006.

11           95. Defendant Bruce Weber is a resident of the State of Washington and  
12 was last known to reside at 23245 Stottlemeyer Rd. NE, Poulsbo, WA 98370. Defendant  
13 Weber was an employee of WMB on and for some time before the Bank Seizure. During  
14 such period of employment, Defendant Weber's principal place of employment with WMB  
15 was Seattle, Washington. Defendant Weber has entered into one or more of the agreements  
16 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
17 connection with the Bank Seizure on September 25, 2008, Defendant Weber's employment  
18 relationship with WMB was terminated. Defendant Weber was a plaintiff in *Williams v.*  
19 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

20           96. Defendant Jeffrey P. Weinstein is a resident of the State of New York  
21 and was last known to reside at 180 West 20th St., Apt. 14E, New York, NY 10011.  
22 Defendant Weinstein was an employee of WMB on and for some time before the Bank  
23 Seizure. In connection with the Bank Seizure on September 25, 2008, Defendant  
24 Weinstein's employment relationship with WMB was terminated. Defendant Weinstein was  
25 a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).  
26

1           97. Defendant Stephen E. Whittaker is a resident of the State of California  
2 and was last known to reside at 115 Crane Terrace, Orinda, CA 94563. Defendant  
3 Whittaker was an employee of WMB on and for some time before the Bank Seizure.  
4 Defendant Whittaker has entered into one or more of the agreements or plans at issue that  
5 specify that Washington law shall govern those agreements or plans. In connection with the  
6 Bank Seizure on September 25, 2008, Defendant Whittaker's employment relationship with  
7 WMB was terminated. Defendant Whittaker was a plaintiff in *Williams v. FDIC*, No. 09-504  
8 (RAJ) (W.D. Wash. Aug. 30, 2011).

9           98. Defendant John F. Woods is a resident of the State of California and  
10 was last known to reside at 655 Sausalito Boulevard, Sausalito, CA 94965. Defendant  
11 Woods was an employee of WMB on and for some time before the Bank Seizure. During  
12 such period of employment, Defendant Woods' principal place of employment with WMB  
13 was Seattle, Washington. Defendant Woods has entered into one or more of the agreements  
14 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
15 connection with the Bank Seizure on September 25, 2008, Defendant Woods' employment  
16 relationship with WMB was terminated.

17           99. Defendant Weijia Wu is a resident of the State of Washington and was  
18 last known to reside at 8927 192nd St. SW, Edmonds, WA 98026. Defendant Wu was an  
19 employee of WMB on and for some time before the Bank Seizure. During such period of  
20 employment, Defendant Wu's principal place of employment with WMB was Seattle,  
21 Washington. Defendant Wu has entered into one or more of the agreements or plans at issue  
22 that specify that Washington law shall govern those agreements or plans. In connection with  
23 the Bank Seizure on September 25, 2008, Defendant Wu's employment relationship with  
24 WMB was terminated. Subsequent to Defendant Wu's termination from WMB, Defendant  
25 Wu was hired by WMI and subsequently by WMI Holdings Corporation.  
26

1           100. Defendant Kathy H. Yeu is a resident of the State of New York and  
2 was last known to reside at 115 E. 90th St., Apt. 7A, New York, NY 10128. Defendant Yeu  
3 was an employee of WMB for some time before the Bank Seizure. Defendant Yeu's  
4 employment relationship with WMB was terminated on January 31, 2008.

5           101. Defendant Michael R. Zarro is a resident of the State of Virginia and  
6 was last known to reside at 2216 Logan St., Richmond, VA 23235. Defendant Zarro was an  
7 employee of WMB on and for some time before the Bank Seizure. During such period of  
8 employment, Defendant Zarro's principal place of employment with WMB was Seattle,  
9 Washington. Defendant Zarro has entered into one or more of the agreements or plans at  
10 issue that specify that Washington law shall govern those agreements or plans. In connection  
11 with the Bank Seizure on September 25, 2008, Defendant Zarro's employment relationship  
12 with WMB was terminated.

### 13                           **JURISDICTION AND VENUE**

14           102. This action arises under the laws of the United States, including the  
15 FDIA and the Federal Regulations. This Court has subject matter jurisdiction over this  
16 action pursuant to 28 U.S.C. § 1331 because there are federal questions regarding  
17 interpretation of the FDIA and the Federal Regulations. This Court also has subject matter  
18 jurisdiction pursuant to 12 U.S.C. § 1819(b)(2)(A), which provides that "all suits of a civil  
19 nature at common law or in equity to which the [Federal Deposit Insurance] Corporation, in  
20 any capacity, is a party shall be deemed to arise under the laws of the United States." Under  
21 sections 702 and 703 of the Administrative Procedure Act, the sovereign immunity of the  
22 FDIC and FRB is waived in "[a]n action in a court of the United States seeking relief other  
23 than money damages," such as an action for declaratory judgment. 5 U.S.C. §§ 702-03. In  
24 addition, the FDIC has explicitly waived sovereign immunity. *See* 12 U.S.C. § 1819 ("[T]he  
25 Corporation shall become a body corporate and as such shall have power . . . [t]o sue and be  
26



1 sued, and complain and defend, by and through its own attorneys, in any court of law or  
2 equity, State or Federal.”).

3 103. Venue is proper in the Western District of Washington under 28  
4 U.S.C. § 1391(e), which provides that a “civil action in which a defendant is an officer or  
5 employee of the United States or any agency thereof acting in his official capacity or under  
6 color of legal authority, or an agency of the United States, or the United States, may, except  
7 as otherwise provided by law, be brought in any judicial district in which (A) a defendant in  
8 the action resides, (B) a substantial part of the events or omissions giving rise to the claim  
9 occurred, or (C) the plaintiff resides if no real property is involved in the action.” This Court  
10 has personal jurisdiction over Defendants FDIC and FRB under 28 U.S.C. § 1391(e) and  
11 because each has offices in Seattle, Washington.

12 104. This Court has personal jurisdiction over Individual Defendants Robert  
13 Batt, Robert C. Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Carey M. Brennan, Curt  
14 Brouwer, John M. Browning, Kimberly A. Cannon, Gennadiy Darakhovskiy, Jake D. Domer,  
15 William Finzer, Brian T. Foster, Matthew Gaspard, Debora D. Horvath, Marc Malone, John  
16 P. McMurray, Randy Melby, Rachelle M. Mileur, Michael Reynoldson, Janquelin F. Schrag,  
17 Chandan Sharma, Scott Shaw, Jane Suchan, Craig E. Tall, Ann Tierney, Bruce Weber, and  
18 Weijia Wu because they each reside in the Western District of Washington. *See* Wash. Rev.  
19 Code § 1.48.185 (2003).

20 105. This Court has personal jurisdiction over Individual Defendants Susan  
21 Allison, Robert N. Batt, Sean Beckett, Robert C. Bjorklund, Mary Beth Davis, Jake Domer,  
22 Camille Everett, Brian T. Foster, Peter Freiling, Keith O. Fukui, Michelle S. Grau-Iversen,  
23 Robert C. Hill, Rajiv Kapoor, Kenneth E. Kido, Ronald M. Lowery, Randy Melby, Michelle  
24 McCarthy, John H. Murphy, Janquelin F. Schrag, Scott Shaw, Jacob E. Sorensen, Mitchell  
25 Stevens, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, Bruce Weber,  
26 Jeffrey P. Weinstein, and Stephen E. Whittaker because they each have purposefully availed

1 themselves of the privileges of conducting activities in the Western District of Washington  
2 by previously filing a related suit therein. *See* Wash. Rev. Code § 1.48.185 (2003); *Williams*  
3 *v. FDIC*, 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

4 106. This Court has personal jurisdiction over Individual Defendants Susan  
5 C. Allison, Todd H. Baker, Melba Ann Bartels, Robert Batt, Sean Beckett, Robert C.  
6 Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Carey M. Brennan, Alfred Brooks, Curt  
7 Brouwer, John M. Browning, Kimberly A. Cannon, Thomas W. Casey, Gennadiy  
8 Darakhovskiy, Daryl D. David, Jake D. Domer, Duane Duck, Andrew J. Eschenbach,  
9 William Finzer, Brian T. Foster, Peter Freilinger, Matthew Gaspard, Debora D. Horvath,  
10 Kenneth Kido, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Susan McCarthy,  
11 John P. McMurray, Randy Melby, Rachelle M. Mileur, Thomas E. Morgan, Casey M. Nault,  
12 Michael Reynoldson, Stephen J. Rotella, David Schneider, Janquelin F. Schrag, Patricia  
13 Schulte, Chandan Sharma, Scott Shaw, Genevieve Smith, Steven Kenneth Stearns, Steven F.  
14 Stein, Jane Suchan, Craig E. Tall, Radha Thompson, Ann Tierney, Bruce Weber, Robert J.  
15 Williams, Jr., John F. Woods, Weijia Wu, and Michael R. Zarro because they each lived  
16 and/or worked in Washington State when the events described herein took place and/or when  
17 the payments at issue allegedly accrued.

18 107. This Court has personal jurisdiction over Individual Defendants Susan  
19 C. Allison, Edward F. Bach, Todd H. Baker, Melba Ann Bartels, Robert N. Batt, David  
20 Beck, Sean Beckett, Henry J. Berens, Bruce W. Bivert, Robert C. Bjorklund, Anthony  
21 Joseph Bozzuti, Gary P. Brady, Carey M. Brennan, Alfred Brooks, Curt Brouwer, John M.  
22 Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan Carlisle, Thomas W.  
23 Casey, Daryl D. David, Mary Beth Davis, Jake D. Domer, Duane Duck, Andrew J.  
24 Eschenbach, Camille Everett, William Finzer, Stephen Fortunato, Brian T. Foster, Peter  
25 Freilinger, Keith Fukui, Matthew Gaspard, Michele S. Grau-Iversen, Tammy Harrington,  
26 Robert C. Hill, Debora D. Horvath, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne

1 R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Susan McCarthy,  
2 John P. McMurray, Randy Melby, Joe Anthony Melo, Rachelle M. Mileur, Thomas E.  
3 Morgan, John H. Murphy, Casey Nault, Michael Reynoldson, Patricia Roberts, Laura C.  
4 Rogers Rodrigues, Luis P. Rodriguez, Stephen J. Rotella, Foad Said, David Schneider,  
5 Janquelin F. Schrag, Patricia Schulte, Chandan Sharma, Scott Shaw, Genevieve Smith, Jacob  
6 E. Sorenson, Steven Kenneth Stearns, Steven F. Stein, Mitchell Stevens, Richard Strauch,  
7 Jane Suchan, Craig E. Tall, Andrew Tauber, Radha Thompson, Ann Tierney, David A.  
8 Tomlinson, Benjamin Turk, Anthony F. Vuoto, Bruce Weber, Stephen E. Whittaker, Robert  
9 J. Williams, Jr., John F. Woods, Weijia Wu, and Michael R. Zarro for the additional reason  
10 that each of them has purposefully availed themselves of the laws of the State of Washington  
11 by entering into one or more of the agreements or plans at issue in this case that provide that  
12 the laws of the State of Washington shall govern all issues arising therefrom.

13 108. This Court has personal jurisdiction over all ninety-one (91) Individual  
14 Defendants because they each purposefully interjected themselves into Washington affairs by  
15 having chosen to maintain an employer-employee relationship with a Washington based  
16 corporation such as WMI and/or WMB, as applicable, at the time of the events underlying  
17 the claims at issue.

18 109. Each of the Individual Defendants is named as a defendant in this  
19 action pursuant to the Bankruptcy Order. *See* Bankruptcy Order at 2 (directing WMILT to  
20 file a declaratory judgment action “naming the FDIC, the FRB, and all claimants”). In  
21 addition to the bases for personal jurisdiction detailed at paragraphs 104-108 herein, this  
22 Court also has personal jurisdiction over each Individual Defendant pursuant to and to the  
23 extent necessary to effectuate the Bankruptcy Order.

**BACKGROUND**

**I. THE DOWNGRADE, SEIZURE, AND THE DEBTORS' BANKRUPTCY FILINGS**

110. On September 7, 2008, each of WMI and WMB entered into a Memorandum of Understanding (each an "MOU") with the OTS to address certain supervisory issues identified by the OTS during its examination of WMI and WMB (as the case may be), which examination was completed on June 30, 2008. WMB's MOU addressed, among other things, WMB's compliance with minimum regulatory capital requirements and the need to review and significantly improve its overall risk management structures and controls.

111. On or around September 18, 2008, the FDIC assigned WMB a composite regulatory CAMELS Rating of 4.<sup>3</sup>

112. Shortly thereafter, on September 25, 2008, in what is the largest bank failure in United States history, the Director of the OTS, by order number 2008-36, appointed the FDIC Receiver, and advised that the FDIC Receiver was immediately taking possession of WMB's assets.

113. Immediately after its appointment as receiver, the FDIC Receiver sold substantially all of the assets of WMB (the "JPMC Transaction") to JPMC pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008 (the "Purchase and Assumption Agreement").

114. The following day, on September 26, 2008, each of the Debtors filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, as

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<sup>3</sup> The CAMELS Rating System is a bank rating system where bank supervisory authorities rate institutions according to the following six factors: capital adequacy; asset quality; management quality; earnings; liquidity; and sensitivity to market risk. A rank of 1 is best and 5 is worst.

1 amended, in the Bankruptcy Court. As of that date, and until March 16, 2012, WMI owned  
2 all of the outstanding equity of WMB.

3 115. On December 12, 2011, the Debtors filed their *Seventh Amended Joint*  
4 *Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* (as  
5 modified, the “Seventh Amended Plan”). By order, dated February 23, 2012, the Bankruptcy  
6 Court confirmed the Seventh Amended Plan (the “Confirmation Order”) and, upon  
7 satisfaction or waiver of the conditions described in the Seventh Amended Plan, the  
8 transactions contemplated by the Seventh Amended Plan were consummated on March 19,  
9 2012. Pursuant to the Seventh Amended Plan, the Confirmation Order and that certain  
10 related WMI Liquidating Trust Agreement, effective March 6, 2012, the administration of  
11 the Debtors’ chapter 11 cases and the responsibility to reconcile and litigate remaining  
12 disputed proofs of claim, among other things, were transferred to WMILT.

13 116. Upon information and belief, in connection with, and upon  
14 consummation of, the JPMC Transaction, all employees of WMI (other than one employee)  
15 and WMB, as the case may be, who were active employees as of September 25, 2008 were  
16 transferred to, and became employees of, JPMC.

17 117. The Purchase and Assumption Agreement expressly provided that  
18 JPMC would not assume certain liabilities, including, among other things, liabilities related  
19 to “all employee benefit plans sponsored by the holding company of [WMB]” and “[a]ll  
20 management, employment, change-in-control, severance, unfunded deferred compensation  
21 and individual consulting agreements or plans (i) between [WMB] and its employees or (ii)  
22 maintained by [WMB] on behalf of its employees.” See Purchase and Assumption  
23 Agreement at 34.<sup>4</sup>

24  
25  
26 <sup>4</sup> A copy of the Purchase and Assumption Agreement is publicly available at  
[http://www.fdic.gov/about/freedom/Washington\\_Mutual\\_P\\_and\\_A.pdf](http://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf).

## II. THE EMPLOYEE CLAIMS

118. Many former employees of WMB, and certain former employees of WMI, filed proofs of claim against WMI's chapter 11 estate, seeking payment pursuant to the various agreements and plans at issue.

119. Many former employees of WMB, some of whom are Individual Defendants in this action, also filed claims against the FDIC Receiver seeking payments pursuant to employment contracts between such former employees and WMB. The FDIC Receiver denied the employees' claims for severance and other benefits, and certain employees appealed such denial to the United States District Court for the Western District of Washington. *See Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011), *aff'd*, 492 Fed. App'x 796 (9th Cir. 2012). In such litigation, the FDIC Receiver asserted that the Automatic Termination Regulation, 12 C.F.R. § 163.39 (formerly § 563.39), rendered the various employment contracts at issue unenforceable against the FDIC Receiver. The former employees of WMB argued that the rights to payment under the employment contracts at issue vested at execution and, therefore, 12 C.F.R. § 163.39 did not operate to automatically terminate them. [Dkt. # 114 at pp 9-10]. Relying on "binding Ninth Circuit authority" that "squarely contradicted" the former WMB employees' argument to the contrary, this Court held that the rights to payment pursuant to the employment contracts did not fully vest at execution. *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011), at 8-9 ("Because the Plaintiffs are not entitled to payment under employment agreements until there is a change in control or the occurrence of some other triggering event(s), the court rejects Plaintiffs' contention that rights to payment vested upon execution."). Accordingly, this Court granted the FDIC Receiver's motion to dismiss, finding that the Automatic Termination Regulation applied and that the employment contracts were unenforceable. *Id.* Such decision was affirmed on appeal to the United States Court of Appeals for the Ninth Circuit. 492 Fed. App'x 796 (9th Cir. 2012).

120. In the Employee Claims, the Individual Defendants seek payments pursuant to various employment contracts and employee benefit plans, including:

- A. individual contracts between either WMI or WMB and the respective employee entitled “Change in Control Agreement” or “Employment Agreement”;
- B. individual contracts between either WMI or WMB and the respective employee regarding a “special bonus opportunity”;
- C. individual contracts between WMI and the respective employee entitled “Cash Long Term Incentive Award”;
- D. the WaMu Severance Plan (as defined below);
- E. the Equity Incentive Plan (as defined below);
- F. the Washington Mutual, Inc. Executive Target Retirement Income Plan (effective as of January 1, 2004);
- G. the WaMu Executive Officer Severance Plan (effective as of April 1, 2008);
- H. a “Confidential Executive Separation Agreement”; and
- I. individual “Change in Control Employment Agreements” between Providian Financial Corporation and its respective former employee, who ultimately became an employee of WMB.

**A. Change in Control Agreements**

121. Defendants Susan C. Allison, Edward F. Bach, Melba Ann Bartels, Robert N. Batt, Sean Beckett, Henry J. Berens, Bruce W. Bivert, Anthony Joseph Bozzuti, Curt Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan Carlisle, Gennadiy Darakhovskiy, Mary Beth Davis, Andrew J. Eschenbach, William Finzer, Stephen Fortunato, Brian T. Foster, Keith O. Fukui, Matthew Gaspard, Michele S. Grauverson, Robert C. Hill, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Randy Melby, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson, Laura C. Rogers



Rodrigues, Luis P. Rodriguez, Januelin F. Schrag, Patricia Schulte, Chandan Sharma, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Mitchell Stevens, Richard Strauch, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, David A. Tomlinson, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, and Michael R. Zarro have asserted claims pursuant to individual agreements with WMB entitled “Employment Agreement” or “Change in Control Agreement” (each a “WMB CIC Agreement,” and, collectively, the “WMB CIC Agreements”).<sup>5</sup>

122. Defendants Todd H. Baker, Alfred Brooks, Thomas W. Casey, Daryl D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David Schneider, Craig E. Tall, Anthony F. Vuoto, and Robert J. Williams, Jr. have asserted claims pursuant to individual agreements with WMI entitled “Employment Agreement” or “Change in Control Agreement” (each a “WMI CIC Agreement” and, collectively, the “WMI CIC Agreements,” and, together with the WMB CIC Agreements, the “CIC Agreements”).<sup>6</sup>

123. The CIC Agreements set forth the terms and conditions of employment and provide for extraordinary payments in the form of a “change in control” payment. With certain limited exceptions, employees of WMI entered into a CIC Agreement with WMI, and employees of WMB entered into a CIC Agreement with WMB. Although the WMI CIC Agreements contain certain provisions that are different from the WMB CIC Agreements, each CIC Agreement generally provides for “change in control” payments to be paid to the employee if, upon or within 2 or 3 years after a “change in control” occurs, either (a) the employee’s employment is terminated without “cause,” or (b) the employee resigns for “good reason” and no reason exists for either WMI or WMB, as applicable, to terminate the employee for “cause.”

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<sup>5</sup> A sample WMB CIC Agreement is annexed hereto as **Exhibit D**.

<sup>6</sup> A sample WMI CIC Agreement is annexed hereto as **Exhibit E**.

124. Both forms of CIC Agreement contain the same definition of “change in control.” *See* Sample WMB CIC Agreement §§ 5(g)(3), (5), a copy of which is annexed hereto as **Exhibit D**; Sample WMI CIC Agreement §§ 11(c), (e), a copy of which is annexed hereto as **Exhibit E**. The Individual Defendants have previously alleged that their “change in control” benefits were triggered as a result of the Bank Seizure and/or JPMC Transaction, pursuant to one or both of the following definitions of “change in control” in their respective agreements:

(c) The good-faith determination by the Board that any Person<sup>7</sup> or group (other than a Subsidiary or any employee benefit plan of Washington Mutual or a Subsidiary) has acquired direct or indirect possession of the power to direct or cause to direct the management or policies of Washington Mutual, whether through the ability to exercise voting power, by contract or otherwise; or

(e) The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of Washington Mutual’s assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.

*See* Sample WMI CIC Agreement § 11(c), (e).

125. Pursuant to the CIC Agreements, to the extent (a) a “change in control” occurs and (b) either of the termination or resignation conditions have been satisfied, then the employee is entitled to receive “within five business days after the effective date of such termination or resignation . . . , a lump sum equal to [two or] three times employee’s annual compensation” subject to certain offsets. *See* Sample WMI CIC Agreement § 6(c); Sample WMB CIC Agreement § 5(c).

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<sup>7</sup> Pursuant to the CIC Agreements, “Person” means “any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization of government (or any agency, instrumentality or political subdivision thereof).” Sample WMI CIC Agreement § 11(f); Sample WMB CIC Agreement § 5(h)(1).

1                    **B.     Alternate or Contingent Claim for Severance Pursuant to Rotella CIC**  
2                    **Agreement**

3                    126. One Individual Defendant, Stephen J. Rotella, also has asserted an  
4 alternate or contingent claim for severance payments pursuant to the non-“change in control”  
5 terms of Defendant Rotella’s WMI CIC Agreement (the “Rotella CIC Agreement”).<sup>8</sup>  
6 Whereas the “change in control” provisions of the Rotella CIC Agreement provide for a  
7 change in control payment equal to three times Defendant Rotella’s annual compensation, the  
8 base severance provisions provide for severance in the amount of two times Defendant  
9 Rotella’s annual compensation for termination without “cause” unrelated to a “change in  
10 control.” See Rotella CIC Agreement § 6(h). Thus, Defendant Rotella has asserted an  
11 alternate or contingent claim for severance pursuant to the base severance provisions of the  
12 Rotella CIC Agreement to the extent the Bankruptcy Court determines that he is not entitled  
13 to the “change of control” payment pursuant thereto.

14                    **C.     Claim for Deferred Signing Bonus Pursuant to Brady Offer Letter**

15                    127. One Individual Defendant, Gary P. Brady, has also asserted a claim for  
16 payment of a deferred signing bonus pursuant to the “change in control” terms set forth in  
17 Defendant Brady’s offer letter, dated May 13, 2008 (the “Brady Offer Letter”).<sup>910</sup>  
18 Specifically, the letter states that, if Defendant Brady’s “position is eliminated in connection  
19 with a change in control as defined in [his] change in control agreement, [he] is entitled to  
20 full payment of the deferred signing bonus.” Brady Offer Letter at 2. As discussed *supra* in  
21

22 \_\_\_\_\_  
<sup>8</sup> The Rotella CIC Agreement is annexed hereto as **Exhibit F**.

23 <sup>9</sup> Mr. Brady’s proof of claim, which contains the Brady Offer Letter, is annexed hereto as **Exhibit G**.

24 <sup>10</sup> Although Individual Defendant Brady has asserted that he is “no longer seeking payment of the deferred  
25 signing bonus,” he has not formally withdrawn this claim and, accordingly, WMILT is including Defendant  
26 Brady’s claim pursuant to his deferred signing bonus in this action. See *In re Washington Mutual, Inc.*, No.: 08-  
12229 (MFW), *Gary P. Brady’s Response To WMILT’s Eighty-Second Omnibus (Substantive) Objection To*  
*Change In Control* (Bankr. D. Del. Sept. 7, 2012) [Dkt. 10608].

1 paragraph 124, the Individual Defendants have previously alleged that the Bank Seizure  
2 and/or JPMC Transaction triggered their “change in control” benefits.

3 **D. Retention Bonus Agreements**

4 128. Defendants Edward F. Bach, Melba Ann Bartels, Henry J. Berens,  
5 Bruce W. Bivert, Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan, Curt  
6 Brouwer, Kimberly A. Cannon, Mary Beth Davis, Jake D. Domer, William Finzer, Brian T.  
7 Foster, Peter Freiling, Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones, Kenneth E.  
8 Kido, Michelle McCarthy, Susan McCarthy, Rachelle M. Mileur, Thomas E. Morgan, Casey  
9 Nault, Michael Reynoldson, Patricia Roberts, Chandan Sharma, Genevieve Smith, Jacob E.  
10 Sorenson, Steven F. Stein, Richard Strauch, Jane Suchan, David A. Tomlinson, Bruce  
11 Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, John F. Woods, Weijia Wu, and Michael  
12 R. Zarro have asserted claims pursuant to individual memo agreements with WMB providing  
13 for a “special bonus opportunity” (each a “WMB Retention Bonus Agreement,” and,  
14 collectively, the “WMB Retention Bonus Agreements”).<sup>11</sup>

15 129. Defendants Todd H. Baker, Daryl D. David, Debora D. Horvath, John  
16 P. McMurray, David Schneider, Anthony F. Vuoto, and Robert J. Williams, Jr., have asserted  
17 claims pursuant to individual memo agreements with WMI providing for a “special bonus  
18 opportunity” (each a “WMI Retention Bonus Agreement,” and, collectively, the “WMI  
19 Retention Bonus Agreements,” and, together with the WMB Retention Bonus Agreements,  
20 the “Retention Bonus Agreements”).<sup>12</sup>

21 130. The Retention Bonus Agreements were issued by either WMI or  
22 WMB, as applicable, to their respective employees, and offered a bonus payment for the  
23 employee’s continued employment through a date certain. The Retention Bonus Agreements  
24

25 <sup>11</sup> A sample WMB Retention Bonus Agreement is annexed hereto as **Exhibit H**.

26 <sup>12</sup> A sample WMI Retention Bonus Agreement is annexed hereto as **Exhibit I**.

1 vary in form and language, but each requires the employee to remain employed for a certain  
2 period of time, after which the employee is eligible to receive the bonus payment. In many  
3 of the Retention Bonus Agreements, the employment requirement is waived upon the  
4 occurrence of certain conditions, including in the event of a “change in control,” as defined  
5 in the employee’s applicable CIC Agreement.

6 **E. Cash Long Term Incentive Agreements**

7 131. Defendants Susan C. Allison, Gennadiy Darakhovskiy, Marc Malone,  
8 Michelle McCarthy, John P. McMurray, Chandan Sharma, Mitchell Stevens, Richard  
9 Strauch, Andrew Tauber, Radha Thompson, and Ann Tierney have asserted claims pursuant  
10 to memo notices that provided for a “Cash Long-Term Incentive Award” (the “Cash LTI  
11 Agreements”).<sup>13</sup>

12 132. The Cash LTI Agreements were issued by WMI and have identical  
13 substantive provisions and vesting dates, but provide for varying payments. The payments  
14 vest over a period of three years, with an installment payment becoming due at each  
15 anniversary date, and provide, in relevant part, that an employee must be employed on each  
16 applicable anniversary date in order to receive each portion of the payment.

17 133. The Cash LTI Agreements further provide that the vesting and  
18 payments would be accelerated upon the occurrence of a “change in control,” as defined in  
19 the employee’s respective CIC Agreement.

20 **F. WaMu Severance Plan**

21 134. Defendants Susan C. Allison, Sean Beckett, Henry J. Berens, Robert  
22 C. Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Kimberly A. Cannon, Mary Beth  
23 Davis, Duane Duck, Camille Everett, Michele S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor,  
24 Marc Malone, Thomas E. Morgan, John H. Murphy, Casey Nault, Michael Reynoldson,  
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26 <sup>13</sup> A sample Cash LTI Agreement is annexed hereto as **Exhibit J**.

1 Laura C. Rogers Rodrigues, Luis P. Rodriguez, Chandan Sharma, Scott Shaw, Genevieve  
 2 Smith, Richard Strauch, Radha Thompson, Ann Tierney, David A. Tomlinson, Stephen E.  
 3 Whittaker, Weijia Wu, and Michael R. Zarro have asserted claims and, in some cases,  
 4 alternate or contingent claims, pursuant to the WaMu Severance Plan (Amended and  
 5 Restated Effective January 1, 2008) (as terminated effective September 25, 2008) (the  
 6 “WaMu Severance Plan”),<sup>14</sup> which provides payments to eligible employees “of Washington  
 7 Mutual, Inc. and its Affiliates,” in the event of a “job elimination,” as defined therein.

8 135. In general, the WaMu Severance Plan provided that, in the event of a  
 9 job elimination (as defined therein), participants who met the requirements under the WaMu  
 10 Severance Plan were eligible to receive certain defined severance payments. *See* WaMu  
 11 Severance Plan § 3.2.

12 136. In particular, the WaMu Severance Plan provides for two types of  
 13 severance payments: (1) “change in control” severance benefits, for Level 6 employees only,  
 14 which are triggered upon termination of employment following the occurrence of a “change  
 15 in control;” and (2) standard or base severance benefits based on the employee’s length of  
 16 service with the applicable entity, which benefits are triggered only if the employee’s  
 17 position was eliminated “because of corporate restructuring, downsizing, or a reduction in  
 18 force.” *See id.*

19 **G. Equity Incentive Plan**

20 137. Defendants Susan C. Allison, Edward F. Bach, Todd H. Baker, Melba  
 21 Ann Bartels, Robert N. Batt, David Beck, Sean Beckett, Henry J. Berens, Bruce W. Bivert,  
 22 Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan, Alfred Brooks, Curt  
 23 Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan  
 24 Carlisle, Thomas W. Casey, Daryl D. David, Mary Beth Davis, Jake D. Domer, Duane Duck,  
 25

26 <sup>14</sup> A copy of the WaMu Severance Plan is annexed hereto as **Exhibit K**.

Andrew J. Eschenbach, Camille Everett, William Finzer, Stephen Fortunato, Brian T. Foster, Peter Freilinger, Keith O. Fukui, Matthew Gaspard, Michele S. Grau-Iversen, Tammy Harrington,<sup>15</sup> Robert C. Hill, Debora D. Horvath, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Susan McCarthy, John P. McMurray, Randy Melby, Joe Anthony Melo, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson, Patricia Roberts, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Stephen J. Rotella, Foad Said, David Schneider, Janquelin F. Schrag, Patricia Schulte, Sharma Chandan, Scott Shaw, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Steven F. Stein, Mitchell Stevens, Richard Strauch, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, David A. Tomlinson, Benjamin Turk, Anthony F. Vuoto, Bruce Weber, Stephen E. Whittaker, Robert J. Williams, Jr., John F. Woods, Weijia Wu, and Michael R. Zarro have asserted claims pursuant to the Washington Mutual, Inc. Amended and Restated 2003 Equity Incentive Plan (the “Equity Incentive Plan”),<sup>16</sup> pursuant to which certain employees received, among other things, awards of common stock subject to various restrictions or conditions (the “Restricted Stock”).<sup>17</sup>

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<sup>15</sup> Three (3) of the Individual Defendants (Tammy Harrington, Benjamin Turk and Foad Said) did not file proofs of claim in the Debtors’ bankruptcy cases. These Individual Defendants hold disputed equity interests in the Debtors’ estates relating to restricted stock awards received pursuant to the Equity Incentive Plan. Because such individuals would have been equity holders in WMI, they were not required to file proofs of equity interests in the chapter 11 cases. The Trust objected to the disputed equity interests of these Individual Defendants, along with approximately three thousand (3,000) other individuals, in the *WMI Liquidating Trust’s Eighty-Eighth Omnibus Objection to Disputed Equity Interests* (the “Eighty-Eighth Omnibus Objection”). Individuals listed therein were deemed to have objected to the Eighty-Eighth Omnibus Objection and were not required to respond to such objection unless they wanted to participate actively in the litigation. Individual Defendants Harrington, Turk and Said filed responses to the Eighty-Eighth Omnibus Objection, indicating a desire to participate in the bankruptcy litigation and, accordingly, are named herein pursuant to the Bankruptcy Order.

<sup>16</sup> A copy of the Equity Incentive Plan is annexed hereto as **Exhibit L**.

<sup>17</sup> Jacqueline Ferguson filed a proof of claim solely with respect to the Equity Incentive Plan, but as she was terminated on April 30, 2008 she is not named as an Individual Defendant.



138. The Equity Incentive Plan contains an automatic vesting provision which provides that, upon the occurrence of a “Company Transaction,” certain stock benefits would automatically vest in their holder. *See* Equity Incentive Plan §§ 15.3.1, 15.3.2. The term “Company Transaction” is defined in the Equity Incentive Plan as “(a) a merger or consolidation of the Company with or into any other company or other entity or (b) a sale, lease, exchange or other transfer in one transaction or a series of related transactions undertaken with a common purpose of all or substantially all of the Company’s then outstanding securities or all or substantially all of the Company’s assets . . . .” *Id.* § 2. The Equity Incentive Plan further provides that, to the extent a participant has a CIC Agreement, “Company Transaction” shall have the same definition of “change in control” as contained in the respective CIC Agreement. *Id.*

**H. Washington Mutual, Inc. Executive Target Retirement Income Plan**

139. Defendants Alfred Brooks, Thomas W. Casey, Daryl D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David Schneider, Craig E. Tall, and Anthony F. Vuoto have asserted claims pursuant to the Washington Mutual, Inc. Executive Target Retirement Income Plan (the “ETRIP”),<sup>18</sup> an unfunded plan designed primarily to provide deferred compensation payments to a select group of management and highly compensated employees.

140. The ETRIP provides that, upon a “change in control,” as defined in the employee’s respective CIC Agreement, the eligible employee is automatically credited with additional years of seniority for purposes of vesting benefits. *See* ETRIP § 3.5. Thus, to the extent a “change in control” is deemed to have occurred, such event would accelerate the vesting of an employee’s final payment pursuant to the ETRIP. *Id.*

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<sup>18</sup> A copy of the ETRIP is annexed hereto as **Exhibit M**.

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**I. WaMu Executive Officer Severance Plan**

141. Defendants Todd H. Baker, Alfred Brooks, Thomas W. Casey, Daryl D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David Schneider, Anthony F. Vuoto, and Robert J. Williams, Jr., who were all former employees of WMI, have asserted alternate or contingent claims pursuant to the WaMu Executive Officer Severance Plan (effective as of April 1, 2008) (the “Executive Officer Severance Plan” or “EOSP”).<sup>19</sup> An executive’s entitlement to payments pursuant to the EOSP is mutually exclusive with an entitlement to payments pursuant to the executive’s WMI CIC Agreement. Therefore, the alternate claims allege that, in the event the Bankruptcy Court finds that the executives are not entitled to their “change in control” payment pursuant to the terms of their respective individual WMI CIC Agreements, the executives are entitled to recover severance benefits pursuant to the terms of the EOSP. *See* EOSP § 2.

142. The EOSP provides that an “Eligible Executive” shall be paid a cash severance equal to one and one-half times the sum of the executive’s annual base salary plus certain additional benefits, as set forth therein. *See* EOSP § 3.1.

**J. Confidential Executive Separation Agreement**

143. One Defendant, John Michael Browning, has asserted a claim pursuant to an agreement entitled “Confidential Executive Separation Agreement.”<sup>20</sup> Mr. Browning has alleged that he entered into this agreement in anticipation of the termination of his employment as a result of a reduction in force of the company.

144. Pursuant to the agreement, in exchange for Mr. Browning granting certain releases, Mr. Browning would be entitled to receive a separation payment composed

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<sup>19</sup> A copy of the Executive Officer Severance Plan is annexed hereto as **Exhibit N**.

<sup>20</sup> Mr. Browning’s proof of claim, which contains the related contracts, is annexed hereto as **Exhibit O**.

1 of the equivalent of twenty-four (24) weeks of regular salary, plus a combined leadership and  
2 retention bonus.

3 **K. Providian Agreements**

4 145. Defendants Robert C. Boxberger, Mary Beth Davis, Michele S. Grau-  
5 Iversen, Robert C. Hill, Robert G. Merritt, Michael Rapaport, Laura C. Rogers Rodrigues,  
6 Luis P. Rodriguez, Daniel Shanks, Richard Strauch, Jose O. N. Tagunicar, David A.  
7 Tomlinson, John Webber, Stephen E. Whittaker, and Kathy H. Yeu were former employees  
8 of Providian Financial Corporation (“PFC”) and/or one of its subsidiaries prior to October 1,  
9 2005 (collectively, the “Providian Defendants”).

10 146. On or around October 1, 2005, New American Capital, Inc. (“NACI”),  
11 a former subsidiary of WMI, acquired PFC. Prior to the acquisition of PFC, PFC owned all  
12 of the stock of Providian National Bank (“PNB”). As a result of the acquisition, NACI  
13 owned all of the stock of PNB and, immediately after NACI acquired PFC, PNB merged  
14 with and into WMB. After the October 2005 transactions (collectively, the “Providian  
15 Merger”), the Providian Defendants became employees of WMB and worked in WMB’s  
16 California offices in the business division referred to as “Card Services.”

17 147. Prior to the Providian Merger, the Providian Defendants entered into  
18 certain employment contracts entitled “Change of Control Employment Agreement” with  
19 PFC (each, a “Providian Agreement” and, collectively, the “Providian Agreements”).<sup>21</sup> The  
20 Providian Agreements were for purposes of ensuring that, upon a “change of control” at PFC,  
21 the Providian employees would be entitled to certain payments. The “Effective Date” of the  
22 Providian Agreements is the first day on which a “Change in Control” at PFC occurs. *See*  
23 *Sample Providian Agreement* §§ 1(a), 2.

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25  
26 <sup>21</sup> A sample Providian Agreement is annexed hereto as **Exhibit P**.

148. The Providian Defendants assert that WMI (and, therefore, WMILT) is liable for certain payments pursuant to the Providian Agreements because, among other things, WMI assumed the Providian Agreements as part of the Providian Merger or, alternatively, WMI guaranteed payments pursuant to the Providian Agreements according to the terms thereof.

### III. THE DEBTORS' OBJECTIONS

149. Beginning in June 2009, the Debtors objected to certain of the Employee Claims in the *Debtors' Fifth Omnibus (Substantive) Objection to Claims* (the "Fifth Omnibus Objection") and the *Debtors' Sixth Omnibus (Substantive) Objection to Claims* (the "Sixth Omnibus Objection"). The Fifth and Sixth Omnibus Objections assert that WMI is not liable for agreements entered into by and between WMB and employees of WMB and, even if WMI were liable, no "change in control" had occurred to trigger WMI's alleged obligation to make the payments claimed.

150. On August 15, 2012, WMILT filed the *WMI Liquidating Trust's Seventy-Ninth Omnibus (Substantive) Objection to Claims* (the "Seventy-Ninth Omnibus Objection"), *WMI Liquidating Trust's Eightieth Omnibus (Substantive) Objection to Claims* (the "Eightieth Omnibus Objection"), *WMI Liquidating Trust's Eighty-First Omnibus (Substantive) Objection to Claims* (the "Eighty-First Omnibus Objection"), and *WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Change in Control Claims* (the "Eighty-Second Omnibus Objection"). The Seventy-Ninth, Eightieth, Eighty-First and Eighty-Second Omnibus Objections assert, among other things, that WMI is not liable for agreements entered into by and between WMB and employees of WMB and, even if WMI were liable, no "change in control" had occurred to trigger WMI's alleged obligation to make the payments claimed.

151. On September 17, 2012, WMILT filed the *WMI Liquidating Trust's Eighty-Fourth Omnibus (Substantive) Objection to, Among Others, Change in Control*

1 *Claims* (the “Eighty-Fourth Omnibus Objection”), *WMI Liquidating Trust’s Eighty-Fifth*  
2 *Omnibus (Substantive) Objection to Change in Control Claims* (the “Eighty-Fifth Omnibus  
3 *Objection*”) and *WMI Liquidating Trust’s Eighty-Eighth Omnibus (Substantive) Objection to*  
4 *Disputed Equity Interests* (the “Eighty-Eighth Omnibus Objection” and, together with the  
5 Fifth Omnibus Objection, Sixth Omnibus Objection, Seventy-Ninth Omnibus Objection,  
6 Eightieth Omnibus Objection, Eighty-First Omnibus Objection, Eighty-Second Omnibus  
7 Objection, Eighty-Fourth Omnibus Objection and Eighty-Fifth Omnibus Objection, the  
8 “Omnibus Objections”). The Eighty-Fourth and Eighty-Fifth Omnibus Objections objected  
9 to the applicable claims on the basis that, among other things, no “change in control” had  
10 occurred to trigger the payments sought.

11 152. Approximately ninety-one (91) former employees filed responses to  
12 the Omnibus Objections. On October 15, 2012, the Bankruptcy Court entered the *Agreed*  
13 *Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and*  
14 *Discovery in Connection Therewith*, which provided for, among other things, the  
15 consolidation of the litigation with respect to all of the Omnibus Objections, and set forth  
16 procedures with respect to a consolidated hearing or series of hearings to consider the relief  
17 requested in the Omnibus Objections.

18 153. On February 19, 2013, WMILT filed the *WMI Liquidating Trust’s*  
19 *Motion for Leave to Amend the Fifth, Sixth, Seventy-Ninth, Eightieth, Eighty-First, Eighty-*  
20 *Second, Eighty-Fourth, Eighty-Fifth, and Eighty-Eighth Omnibus Objections to Claims* (the  
21 “Motion to Amend”). The Motion to Amend sought to amend the Omnibus Objections to  
22 assert, among other things, that WMILT is not liable for the Employee Claims because such  
23 claims seek payments that constitute impermissible “golden parachute payments” pursuant to  
24 the Golden Parachute Regulations and are unenforceable pursuant to the Automatic  
25 Termination Regulation, as discussed in greater detail below.

1           154. In their opposition to the Motion to Amend and contrary to the  
2 subsequent FDIC Determination, certain Individual Defendants claimed that the Golden  
3 Parachute Regulations did not apply to the agreements and plans at issue. *See Joint*  
4 *Objection to WMI Liquidating Trust's Motion to Amend Fifth, Sixth, Seventy-Ninth,*  
5 *Eightieth, Eighty-First, Eighty-Second, Eighty-Fourth, Eighty-Fifth, and Eighty-Eighth*  
6 *Omnibus Objections to Claims* (the "Claimants' Joint Objection"). Specifically, these  
7 Individual Defendants claimed the Golden Parachute Regulations do not "provide WMILT  
8 with standing to enforce the federal statutory and regulatory law prohibiting golden parachute  
9 payments." Claimants' Joint Objection at 10. Moreover, they claimed that, as of the time of  
10 the Bank Seizure, WMI ceased to be covered by the Golden Parachute Regulations and,  
11 therefore, WMILT is not prohibited from making payments pursuant to the agreements and  
12 plans at issue. *Id.* at 10-11.

13           155. On August 23, 2013, the Bankruptcy Court denied WMILT's Motion  
14 to Amend on the grounds that, *inter alia*, the "amendment would be futile because any  
15 decision on the legal issue would not be binding on the FDIC and FRB because they are not  
16 parties to the Omnibus Objections." *See* Bankruptcy Order at 2, annexed hereto as **Exhibit**  
17 **A**. The Bankruptcy Court then ordered WMILT to file this declaratory judgment action  
18 against the FDIC, FRB, and all claimants. *See id.*<sup>22</sup>

#### 19 **IV. THE FDIC REGULATIONS**

##### 20 **A. 12 C.F.R. Part 359.2 (the Golden Parachute Regulations)**

21           156. Each of the Individual Defendant's claims arising out of each of the  
22 respective contracts and benefits plans, as the case may be, are barred by the Golden  
23 Parachute Regulations.

24  
25  
26 <sup>22</sup> Discovery with respect to the underlying litigation in the Bankruptcy Court remains ongoing, but no trial date has been set.

157. The Golden Parachute Regulations, a copy of which is annexed hereto as **Exhibit Q**, provide that “[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment, except as provided in this part.” 12 C.F.R. § 359.2.

158. The Golden Parachute Regulations prohibit insured depository institutions, like WMB, and depository institution holding companies, like WMI, from making certain payments, absent specific regulatory approval, to an IAP<sup>23</sup> (*i.e.*, each of the named Individual Defendants) upon or after (or in contemplation of) the termination of the IAP’s employment or affiliation with the depository institution or holding company, where the requirement to make such payments is triggered by or contingent on the termination of the IAP and such entity is in financial distress at the time of such termination.

159. The purpose of the Golden Parachute Regulations is to, among other things, “prevent the improper disposition of institution assets and to protect the financial soundness of insured depository institutions, depository institution holding companies, and the federal deposit insurance funds,” and to prevent windfall payments to those who may be responsible for, or who participated in risky business activities that contributed to, the troubled condition or failure of financial institutions. *See* Regulation of Golden Parachute and Other Benefits Which May Be Subject to Misuse, Final Rule, 61 Fed. Reg. 5927-27 (Feb. 15, 1996).

160. The Golden Parachute Regulations define what constitutes a “golden parachute payment” in a five-part test as: (1) “any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution [such as WMB] or an affiliated depository institution holding company [such as WMI]”; (2) “for the benefit of any current or former IAP” (such as the named Individual Defendants); (3) which

<sup>23</sup> Pursuant to 12 C.F.R. § 359.1(h)(1), “institution affiliated party” means, inter alia, “[a]ny director, officer, employee . . . of, or agent for, an insured depository institution holding company.”



obligation is contingent on, or by its terms is payable on or after, the termination of such party's primary employment or affiliation with the institution or holding company; (4) is received on or after, or is made in contemplation of certain enumerated Distress Events (as defined below), including, among other things, the insolvency of the insured depository institution or depository institution holding company or the appointment of a receiver; and (5) the termination is at a time when the entity satisfies a Distress Event. *See* 12 C.F.R. § 359.1(f).

161. In particular, a payment constitutes a prohibited "golden parachute payment" if the payment is made or the agreement is received on or after, or is made in contemplation of any of the following events (each a "Distress Event" and, collectively, the "Distress Events"):

- The insolvency (or similar event) of the depository institution or the bankruptcy or insolvency (or similar event) of the depository institution holding company, *see* 12 C.F.R. § 359.1(f)(1)(ii)(A);
- The appointment of a receiver or conservator for the insured depository institution, *see* 12 C.F.R. § 359.1(f)(1)(ii)(B);
- A determination by the appropriate federal banking agency that the depository institution or its holding company is in a "troubled condition," *see* 12 C.F.R. § 359.1(f)(1)(ii)(C);
- The depository institution or the depository institution holding company is assigned a composite rating of 4 or 5 by the appropriate federal banking agency, *see* 12 C.F.R. § 359.1(f)(1)(ii)(D); or
- The insured depository institution is subject to a proceeding to terminate or suspend deposit insurance, *see* 12 C.F.R. § 359.1(f)(1)(ii)(E).

162. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4. *See* the FDIC Determination, a copy of which is annexed hereto as **Exhibit B**; 12 C.F.R. § 359.1(f)(1)(ii)(D). Moreover, an entity with a composite CAMELS Rating of "4" is

officially designated as “troubled.” *See* 12 C.F.R. § 359.1(f)(1)(ii)(C); 12 C.F.R. § 303.101(c); *see also* the FDIC Determination, a copy of which is annexed hereto as **Exhibit B**.

163. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. *See* 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

164. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. *See* § 359.1(f)(1)(ii)(A).

165. As described more fully in paragraph 171 *infra*, and as set forth in the FDIC Determination, the FDIC has found that a Distress Event occurred because, *inter alia*, FDIC records show that WMB was assigned a composite “4” rating, and, therefore, officially designated “troubled,” as of September 18, 2008, and WMI filed for Chapter 11 bankruptcy on September 25, 2008. *See* the FDIC Determination, a copy of which is annexed hereto as **Exhibit B**. The FDIC further found that the agreements and plans at issue fall within the scope of the Golden Parachute Regulations and WMILT is prohibited from making payments pursuant to the agreements or plans without prior regulatory approval. *Id.*

**B. 12 C.F.R. § 163.39 (the Automatic Termination Regulation)**

166. As this Court has found previously, certain of the contracts and benefit plans that give rise to certain of the Individual Defendants’ claims automatically terminated upon the appointment of the FDIC as the receiver for WMB pursuant to the Automatic Termination Regulation.

167. The Automatic Termination Regulation provides that an employment contract between a savings association and its officers and other employees must provide

that, “[i]f the savings association is in default [as defined in section 3(x)(1) of the FDIA], all obligations under the contract shall terminate as of the date of default . . .” *See* 12 C.F.R. § 163.39(b)(4) (a copy of which is annexed hereto as **Exhibit R**). Such regulation is incorporated into employment agreements between the parties regardless of whether it is expressly set forth in the written document. *See Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011) (explaining that 12 C.F.R. § 563.39(b)(5), now 12 C.F.R. § 163.39, will be implied in employment contracts of insured institutions to the extent they are not expressly included in such contracts), *aff’d*, 492 Fed. App’x. 796 (9th Cir. 2012). Thus, as this Court in *Williams* found, under the Automatic Termination Regulation, any employment contract obligation between a savings association and its employees, such as the contracts for which the Individual Defendants assert WMILT is vicariously liable, automatically terminates upon the date of default of the savings association. *See Williams v. FDIC*, No. 09-504 (RAJ) at 8.

168. Like the Golden Parachute Regulations, the Automatic Termination Regulation seeks to prevent employees of a failed or failing financial institution from receiving a windfall at the expense of creditors and depositors.

#### **V. THE FDIC DETERMINATION THAT THE GOLDEN PARACHUTE REGULATIONS PROHIBIT PAYMENT TO INDIVIDUAL DEFENDANTS**

169. In an effort to resolve the outstanding claims necessary to close the Debtors’ chapter 11 cases, WMILT executed stipulations (the “Settlement Agreements”) with thirty-two (32) individual former employees (the “Settling Claimants”) to settle their respective Employee Claims, which Settlement Agreements are, by their terms, expressly subject to the prior approval by the FDIC and FRB of the payments contemplated thereunder.

170. On May 30, 2013, WMILT submitted a request to the FDIC with respect to the thirty-two (32) Settlement Agreements, seeking a determination as to whether the Golden Parachute Regulations applied to certain contracts and benefits plans subject

thereto (the “May 30 Letter”). Specifically, WMILT sought a determination as to whether the Golden Parachute Regulations applied to payments made pursuant to:

- the WMB CIC Agreements;
- certain WMB Retention Bonus Agreements;
- the Cash Long Term Incentive Agreements;
- the WaMu Severance Plan; and
- the Equity Incentive Plan.

171. As discussed *supra* in paragraph 165, and as set forth in the FDIC Determination, the FDIC determined that (i) a Distress Event (as defined above) had occurred, (ii) any payments made to the Settling Claimants pursuant to the above-referenced agreements were subject to the Golden Parachute Regulation,<sup>24</sup> and (iii) such payments are prohibited absent specific, individual, case-by-case regulatory approval. *See* FDIC Determination, a copy of which is annexed hereto as **Exhibit B**.

172. Additionally, the FDIC stated that WMILT must file a formal application prior to making any golden parachute payments pursuant to:

- the Confidential Executive Separation Agreement;
- the ETRIP; and
- the EOSP.

173. Moreover, with respect to all eight (8) above-referenced plans and agreements, the FDIC advised WMILT that, absent prior regulatory approval from the FDIC and FRB, “any current or future settlements of golden parachute payments would result in a violation of Part 359 and potential civil money penalties.” *Id.*

174. The Court should give deference to the FDIC Determination. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984); *Bear Lake Watch, Inc. v. FERC*, 324 F.3d 1071, 1073 (9th Cir. 2003) (noting “deference to an agency’s reasonable interpretation of a statutory provision where Congress has left the question to the

<sup>24</sup> The FDIC Determination is annexed hereto as **Exhibit B**.

1 agency's discretion"). Indeed, the Ninth Circuit grants substantial deference to an agency's  
2 interpretation of its own regulations. *See Forest Guardians v. U.S. Forest Serv.*, 329 F.3d  
3 1089, 1097 (9th Cir. 2003) ("substantial deference"); *Wards Cove Packing Corp. v. Nat'l*  
4 *Marine Fisheries Serv.*, 307 F.3d 1214, 1218 (9th Cir. 2002) ("high degree of deference" if  
5 interpretation is not plainly erroneous or inconsistent with regulation).

6 175. Consistent with the FDIC Determination and WMILT's obligations  
7 under the Settlement Agreements, on August 14, 2013, WMILT filed a formal application  
8 (the "Application") with the FDIC seeking authorization to pay the agreed upon amounts to  
9 each of the Settling Claimants pursuant to the Settlement Agreements.

10 176. Contemporaneously with the Application, WMILT submitted a letter  
11 to the FDIC, dated August 14, 2013, requesting an expedited determination as to whether the  
12 Golden Parachute Regulations applied to the balance of the agreements and benefits plans  
13 referenced herein that were the subject of potential future settlements between WMILT and  
14 certain other Individual Defendants.

15 177. In particular, WMILT sought a determination as to whether the Golden  
16 Parachute Regulations would apply to payments made pursuant to:

- 17 • the WMI CIC Agreements;
- 18 • certain WMI Retention Bonus Agreements and WMB  
Retention Bonus Agreements;
- 19 • the Confidential Executive Separation Agreement;
- 20 • the ETRIP;
- 21 • the Executive Officer Severance Plan; and
- the Providian Agreements.

22 178. Acknowledging its limitations, at a hearing on August 22, 2013, the  
23 Bankruptcy Court denied WMILT's Motion to Amend its claims objections to assert the  
24 Federal Regulations as a defense to the Employee Claims on grounds that, *inter alia*, the  
25 "amendment would be futile because any decision [by the Bankruptcy Court] on the legal  
26 issue would not be binding on the FDIC and FRB because they are not parties to the

1 Omnibus Objections.” *See* Bankruptcy Order at 2. However, as an alternative approach to  
2 resolving the threshold question of law, the Bankruptcy Court simultaneously ordered  
3 WMILT to file this “declaratory judgment action (naming the FDIC, FRB, and all claimants)  
4 seeking a determination [as to] whether WMILT is precluded by [the Golden Parachute  
5 Regulations and Automatic Termination Regulation] or any other similar provision from  
6 paying any of the claimants if their claims are allowed.” *Id.*

**COUNT I**

(As to Defendants: the FDIC, the FRB, Susan C. Allison, Edward F. Bach, Todd H. Baker, Melba Ann Bartels, Robert N. Batt, Sean Beckett, Henry J. Berens, Bruce W. Bivert, Anthony Joseph Bozzuti, Alfred Brooks, Curt Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan Carlisle, Thomas W. Casey, Daryl D. David, Mary Beth Davis, Andrew J. Eschenbach, William Finzer, Stephen Fortunato, Brian T. Foster, Keith O. Fukui, Debora D. Horvath, Matthew Gaspard, Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, John P. McMurray, Randy Melby, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Stephen J. Rotella, Janquelin F. Schrag, David Schneider, Patricia Schulte, Chandan Sharma, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Mitchell Stevens, Richard Strauch, Jane Suchan, Craig E. Tall, Andrew Tauber, Radha Thompson, Ann Tierney, David A. Tomlinson, Anthony F. Vuoto, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, Robert J. Williams, Jr., and Michael R. Zarro)

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the CIC Agreements Are Subject to the Golden Parachute Regulations**

179. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

180. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the WMB CIC Agreements are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants with WMB and WMI CIC Agreements have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the CIC Agreements in Bankruptcy Court.<sup>25</sup>

181. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>26</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

<sup>25</sup> As noted *supra* at paragraphs 123-24 herein, both forms of CIC Agreement contain the same definition of “change in control” and are otherwise substantively similar in all relevant respects.

<sup>26</sup> See *supra* at paragraphs 161-62.



1           182. Shortly thereafter, on September 25, 2008, WMB experienced another  
2 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
3 FDIC Receiver as receiver for WMB. *See* 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
4 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
5 pursuant to the Purchase and Assumption Agreement.

6           183. The following day, on September 26, 2008, each of the Debtors  
7 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
8 Bankruptcy Code. *See* 12 C.F.R. § 359.1(f)(1)(ii)(A).

9           184. As defined by the Golden Parachute Regulations, WMB was an  
10 insured depository institution, and WMI was its affiliated depository institution holding  
11 company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12  
12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
13 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
14 payment made by WMILT pursuant to the various CIC Agreements to any Individual  
15 Defendant named in Count I would constitute a payment in the nature of compensation by an  
16 insured depository institution and/or an affiliated depository institution holding company.  
17 *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

18           185. Each Individual Defendant named in Count I is a former employee  
19 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
20 Count I is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
21 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the CIC  
22 Agreements would be for the benefit of a former IAP.

23           186. By the terms of the CIC Agreements, payment pursuant to such  
24 agreements is contingent on and/or payable on or after the termination of each respective  
25 Individual Defendant's primary employment with WMB and/or WMI, as applicable.  
26

1           187. In their Employee Claims, the Individual Defendants have alleged that  
2 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
3 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
4 applicable, was terminated in connection with, and at a time when the applicable entity  
5 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the CIC  
6 Agreements would necessarily be received on or after a Distress Event, including, but not  
7 limited to, the Bank Seizure and WMI's bankruptcy petition.

8           188. Declaratory relief is necessary because, although the FDIC has  
9 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
10 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
11 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
12 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
13 payments pursuant to any of the agreements or plans at issue without prior regulatory  
14 approval may be subject to civil money penalties.

15           189. WMILT requests a declaratory judgment that:

- 16           (a) any payments made by WMILT to the above-named Individual  
17 Defendants pursuant to the CIC Agreements and the CIC  
18 Agreements themselves are subject to the Golden Parachute  
19 Regulations;  
20           (b) WMILT is prohibited from making such payments absent  
21 regulatory approval from the FDIC and FRB; and  
22           (c) the Individual Defendants are prohibited from receiving such  
23 payments from WMILT absent regulatory approval from the  
24 FDIC and FRB.  
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26

## COUNT II

*(As to Defendants: the FDIC, the FRB, Edward F. Bach, Todd H. Baker, Melba Ann Bartels, Henry J. Berens, Bruce W. Bivert, Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan, Curt Brouwer, Kimberly A. Cannon, Daryl D. David, Mary Beth Davis, Jake D. Domer, William Finzer, Brian T. Foster, Peter Freiling, Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones, Kenneth E. Kido, Debora D. Horvath, Michelle McCarthy, Susan McCarthy, John P. McMurray, Rachelle M. Mileur, Thomas E. Morgan, Casey Nault, Michael Reynoldson, Patricia Roberts, David Schneider, Chandan Sharma, Genevieve Smith, Jacob E. Sorenson, Steven F. Stein, Richard Strauch, Jane Suchan, David A. Tomlinson, Anthony F. Vuoto, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, Robert J. Williams, Jr, John Woods, Weijia Wu, and Michael R. Zarro)*

### **Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the Retention Bonus Agreements Are Subject to the Golden Parachute Regulations**

190. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

191. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to certain of the WMB Retention Bonus Agreements are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants with WMB and WMI Retention Bonus Agreements have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the Retention Bonus Agreements in Bankruptcy Court.<sup>27</sup>

192. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>28</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

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<sup>27</sup> As noted at paragraph 130 herein, both forms of the Retention Bonus Agreement reference the same definition of “change in control” and are otherwise substantively similar in all relevant respects.

<sup>28</sup> See *supra* at paragraphs 161-62.

1           193. Shortly thereafter, on September 25, 2008, WMB experienced another  
2 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
3 FDIC Receiver as receiver for WMB. *See* 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
4 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
5 pursuant to the Purchase and Assumption Agreement.

6           194. The following day, on September 26, 2008, each of the Debtors  
7 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
8 Bankruptcy Code. *See* 12 C.F.R. § 359.1(f)(1)(ii)(A).

9           195. As defined by the Golden Parachute Regulations, WMB was an  
10 insured depository institution, and WMI was its affiliated depository institution holding  
11 company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12  
12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
13 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
14 payment made by WMILT pursuant to the various Retention Bonus Agreements to any  
15 Individual Defendant named in Count II would constitute a payment in the nature of  
16 compensation by an insured depository institution and/or an affiliated depository institution  
17 holding company. *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

18           196. Each Individual Defendant named in Count II is a former employee  
19 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
20 Count II is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
21 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the  
22 Retention Bonus Agreements would be for the benefit of a former IAP.

23           197. By the terms of the Retention Bonus Agreements, payment pursuant to  
24 such agreements is contingent on and/or payable on or after the termination of each  
25 respective Individual Defendant's primary employment with WMB and/or WMI, as  
26 applicable.

1           198. In their Employee Claims, the Individual Defendants have alleged that  
2 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
3 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
4 applicable, was terminated in connection with, and at a time when the applicable entity  
5 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the  
6 Retention Bonus Agreements would necessarily be received on or after a Distress Event,  
7 including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

8           199. Declaratory relief is necessary because, although the FDIC has  
9 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
10 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
11 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
12 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
13 payments pursuant to any of the agreements or plans at issue without prior regulatory  
14 approval may be subject to civil money penalties.

15           200. WMILT requests a declaratory judgment that:

- 16           (a) any payments made by WMILT to the above-named Individual  
17 Defendants pursuant to the Retention Bonus Agreements are  
subject to the Golden Parachute Regulations;  
18           (b) WMILT is prohibited from making such payments absent  
regulatory approval from the FDIC and FRB; and  
19           (c) the Individual Defendants are prohibited from receiving such  
20 payments from WMILT absent regulatory approval from the  
FDIC and FRB.

**COUNT III**

*(As to Defendants: the FDIC, the FRB, Susan C. Allison, Marc Malone, Michelle McCarthy, John P. McMurray, Chandan Sharma, Mitchell Stevens, Richard Strauch, Andrew Tauber, Radha Thompson, and Ann Tierney)*

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the Cash Long Term Incentive Agreements Are Subject to the Golden Parachute Regulations**

201. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

202. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the Cash Long Term Incentive Agreements are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants with Cash Long Term Incentive Agreements have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to Cash Long Term Incentive Agreements in Bankruptcy Court.

203. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>29</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

204. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

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<sup>29</sup> See *supra* at paragraphs 161-62.

1           205. The following day, on September 26, 2008, the Debtors experienced a  
2 Distress Event when they filed petitions for chapter 11 bankruptcy protection. *See* 12 C.F.R.  
3 § 359.1(f)(1)(ii)(A).

4           206. As defined by the Golden Parachute Regulations, WMB was an  
5 insured depository institution, and WMI was its affiliated depository institution holding  
6 company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12  
7 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
8 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
9 payment made by WMILT pursuant to the various Cash Long Term Incentive Agreements to  
10 any Individual Defendant named in Count III would constitute a payment in the nature of  
11 compensation by an insured depository institution and/or an affiliated depository institution  
12 holding company. *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

13           207. Each Individual Defendant named in Count III is a former employee  
14 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
15 Count III is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
16 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the Cash  
17 Long Term Incentive Agreements would be for the benefit of a former IAP.

18           208. By the terms of the Cash Long Term Incentive Agreements, payment  
19 pursuant to such agreements is contingent on and/or payable on or after the termination of  
20 each respective Individual Defendant's primary employment with WMB and/or WMI, as  
21 applicable.

22           209. In their Employee Claims, the Individual Defendants have alleged that  
23 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
24 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
25 applicable, was terminated in connection with, and at a time when the applicable entity  
26 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the



1 Retention Bonus Agreements would necessarily be received on or after a Distress Event,  
2 including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

3 210. Declaratory relief is necessary because, although the FDIC has  
4 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
5 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
6 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
7 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
8 payments pursuant to any of the agreements or plans at issue without prior regulatory  
9 approval may be subject to civil money penalties.

10 211. WMILT requests a declaratory judgment that:

- 11 (a) any payments made by WMILT to the above-named Individual  
12 Defendants pursuant to the Cash Long Term Incentive  
13 Agreements are subject to the Golden Parachute Regulations;  
14 (b) WMILT is prohibited from making such payments absent  
15 regulatory approval from the FDIC and FRB; and  
16 (c) the Individual Defendants are prohibited from receiving such  
17 payments from WMILT absent regulatory approval from the  
18 FDIC and FRB.  
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**COUNT IV**

*(As to Defendants: the FDIC, the FRB, Susan C. Allison, Sean Beckett, Henry J. Berens, Robert C. Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Kimberly A. Cannon, Mary Beth Davis, Duane Duck, Camille Everett, Michele S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor, Marc Malone, Thomas E. Morgan, John H. Murphy, Casey Nault, Michael Reynoldson, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Chandan Sharma, Scott Shaw, Genevieve Smith, Richard Strauch, Radha Thompson, Ann Tierney, David A. Tomlinson, Stephen E. Whittaker, Weijia Wu, and Michael R. Zarro)*

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the WaMu Severance Plan Are Subject to the Golden Parachute Regulations**

212. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

213. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the WaMu Severance Plan are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants party to the WaMu Severance Plan have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the WaMu Severance Plan in Bankruptcy Court.

214. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>30</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

215. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

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<sup>30</sup> See *supra* at paragraphs 161-62.

1           216. The following day, on September 26, 2008, each of the Debtors  
2 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
3 Bankruptcy Code. *See* 12 C.F.R. § 359.1(f)(1)(ii)(A).

4           217. As defined by the Golden Parachute Regulations, WMB was an  
5 insured depository institution, and WMI was its affiliated depository institution holding  
6 company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12  
7 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
8 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
9 payment made by WMILT pursuant to the WaMu Severance Plan to any Individual  
10 Defendant named in Count IV would constitute a payment in the nature of compensation by  
11 an insured depository institution and/or an affiliated depository institution holding company.  
12 *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

13           218. Each Individual Defendant named in Count IV is a former employee  
14 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
15 Count IV is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
16 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the  
17 WaMu Severance Plan would be for the benefit of a former IAP.

18           219. By the terms of the WaMu Severance Plan, payment pursuant to such  
19 agreements is contingent on and/or payable on or after the termination of each respective  
20 Individual Defendant's primary employment with WMB and/or WMI, as applicable.

21           220. In their Employee Claims, the Individual Defendants have alleged that  
22 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
23 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
24 applicable, was terminated in connection with, and at a time when the applicable entity  
25 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the WaMu  
26

1 Severance Plan would necessarily be received on or after a Distress Event, including, but not  
2 limited to, the Bank Seizure and WMI's bankruptcy petition.

3 221. Declaratory relief is necessary because, although the FDIC has  
4 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
5 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
6 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
7 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
8 payments pursuant to any of the agreements or plans at issue without prior regulatory  
9 approval may be subject to civil money penalties.

10 222. WMILT requests a declaratory judgment that:

- 11 (a) any payments made by WMILT to the above-named Individual  
12 Defendants pursuant to the WaMu Severance Plan are subject  
13 to the Golden Parachute Regulations;  
14 (b) WMILT is prohibited from making such payments absent  
15 regulatory approval from the FDIC and FRB; and  
16 (c) the Individual Defendants are prohibited from receiving such  
17 payments from WMILT absent regulatory approval from the  
18 FDIC and FRB.  
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**COUNT V**

*(As to Defendants: the FDIC, the FRB, Susan C. Allison, Edward F. Bach, Todd H. Baker, Melba Ann Bartels, Robert N. Batt, David Beck, Sean Beckett, Henry J. Berens, Bruce W. Bivert, Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan, Alfred Brooks, Curt Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan Carlisle, Thomas W. Casey, Daryl D. David, Mary Beth Davis, Jake D. Domer, Duane Duck, Andrew J. Eschenbach, Camille Everett, William Finzer, Stephen Fortunato, Brian T. Foster, Peter Freilinger, Keith O. Fukui, Matthew Gaspard, Michele S. Grau-Iversen, Tammy Harrington, Robert C. Hill, Debora D. Horvath, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Susan McCarthy, John P. McMurray, Randy Melby, Joe Anthony Melo, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson, Patricia Roberts, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Stephen J. Rotella, Foad Said, David Schneider, Januelin F. Schrag, Patricia Schulte, Sharma Chandan, Scott Shaw, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Steven F. Stein, Mitchell Stevens, Richard Strauch, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, David A. Tomlinson, Benjamin Turk, Anthony F. Vuoto, Bruce Weber, Stephen E. Whittaker, Robert J. Williams, Jr., John F. Woods, Weijia Wu, and Michael R. Zarro)*

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the Equity Incentive Plan Are Subject to the Golden Parachute Regulations**

223. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

224. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the Equity Incentive Plan are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants party to the Equity Incentive Plan have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the Equity Incentive Plan in Bankruptcy Court.

225. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>31</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

<sup>31</sup> See *supra* at paragraphs 161-62.

1                   226. Shortly thereafter, on September 25, 2008, WMB experienced another  
2 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
3 FDIC Receiver as receiver for WMB. *See* 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
4 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
5 pursuant to the Purchase and Assumption Agreement.

6                   227. The following day, on September 26, 2008, each of the Debtors  
7 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
8 Bankruptcy Code. *See* 12 C.F.R. § 359.1(f)(1)(ii)(A).

9                   228. As defined by the Golden Parachute Regulations, WMB was an  
10 insured depository institution, and WMI was its affiliated depository institution holding  
11 company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12  
12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
13 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
14 payment made by WMILT pursuant to the Equity Incentive Plan to any Individual Defendant  
15 named in Count V would constitute a payment in the nature of compensation by an insured  
16 depository institution and/or an affiliated depository institution holding company. *See* FDIC  
17 Determination (a copy of which is annexed as **Exhibit B**).

18                   229. Each Individual Defendant named in Count V is a former employee  
19 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
20 Count V is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
21 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the  
22 Equity Incentive Plan would be for the benefit of a former IAP.

23                   230. By the terms of the Equity Incentive Plan, payment pursuant to such  
24 agreements is contingent on and/or payable on or after the termination of each respective  
25 Individual Defendant's primary employment with WMB and/or WMI, as applicable.  
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1           231. In their Employee Claims, the Individual Defendants have alleged that  
2 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
3 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
4 applicable, was terminated in connection with, and at a time when the applicable entity  
5 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the Equity  
6 Incentive Plan would necessarily be received on or after a Distress Event, including, but not  
7 limited to, the Bank Seizure and WMI's bankruptcy petition.

8           232. Declaratory relief is necessary because, although the FDIC has  
9 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
10 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
11 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
12 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
13 payments pursuant to any of the agreements or plans at issue without prior regulatory  
14 approval may be subject to civil money penalties.

15           233. WMILT requests a declaratory judgment that:

- 16           (a) any payments made by WMILT to the above-named Individual  
17 Defendants pursuant to the Equity Incentive Plan are subject to  
the Golden Parachute Regulations;  
18           (b) WMILT is prohibited from making such payments absent  
regulatory approval from the FDIC and FRB; and  
19           (c) the Individual Defendants are prohibited from receiving such  
20 payments from WMILT absent regulatory approval from the  
FDIC and FRB.



**COUNT VI**

*(As to Defendants: the FDIC, the FRB, Alfred Brooks, Thomas W. Casey, Daryl D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David Schneider, Craig E. Tall, and Anthony F. Vuoto)*

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the ETRIP Are Subject to the Golden Parachute Regulations**

234. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

235. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the ETRIP are subject to the Golden Parachute Regulations and WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants party to the ETRIP have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the ETRIP in Bankruptcy Court.

236. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>32</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

237. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

238. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

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<sup>32</sup> See *supra* at paragraphs 161-62.

1           239. As defined by the Golden Parachute Regulations, WMB was an  
2 insured depository institution, and WMI was its affiliated depository institution holding  
3 company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12  
4 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
5 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
6 payment made by WMILT pursuant to the ETRIP to any Individual Defendant named in  
7 Count VI would constitute a payment in the nature of compensation by an insured depository  
8 institution and/or an affiliated depository institution holding company. *See* FDIC  
9 Determination (a copy of which is annexed as **Exhibit B**).

10           240. Each Individual Defendant named in Count VI is a former employee  
11 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
12 Count VI is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
13 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the  
14 ETRIP would be for the benefit of a former IAP.

15           241. By the terms of the ETRIP, payment pursuant to such agreements is  
16 contingent on and/or payable on or after the termination of each respective Individual  
17 Defendant's primary employment with WMB and/or WMI, as applicable.

18           242. In their Employee Claims, the Individual Defendants have alleged that  
19 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
20 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
21 applicable, was terminated in connection with, and at a time when the applicable entity  
22 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the ETRIP  
23 would necessarily be received on or after a Distress Event, including, but not limited to, the  
24 Bank Seizure and WMI's bankruptcy petition.

25           243. Declaratory relief is necessary because, although the FDIC has  
26 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain

1 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
2 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
3 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
4 payments pursuant to any of the agreements or plans at issue without prior regulatory  
5 approval may be subject to civil money penalties.

6 244. WMILT requests a declaratory judgment that:

- 7 (a) any payments made by WMILT to the above-named Individual  
8 Defendants pursuant to the ETRIP are subject to the Golden  
9 Parachute Regulations;  
10 (b) WMILT is prohibited from making such payments absent  
11 regulatory approval from the FDIC and FRB; and  
12 (c) the Individual Defendants are prohibiting from receiving such  
13 payments from WMILT absent regulatory approval from the  
14 FDIC and FRB.

12 **COUNT VII**

13 *(As to Defendants: the FDIC, the FRB, Todd H. Baker, Alfred Brooks, Thomas W. Casey,*  
14 *Daryl D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David*  
15 *Schneider, Anthony F. Vuoto, and Robert J. Williams, Jr.)*

16 **Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants**  
17 **Pursuant to the WaMu Executive Officer Severance Plan Are Subject to the Golden**  
18 **Parachute Regulations**

19 245. Plaintiff, WMILT, incorporates by reference the allegations of  
20 paragraphs 1 through 178 of the Complaint as if set forth herein.

21 246. An actual controversy exists between the parties as the FDIC has  
22 determined that any payments made pursuant to the WaMu Executive Officer Severance Plan  
23 are subject to the Golden Parachute Regulations and WMILT is prohibited from making such  
24 payments without prior regulatory approval; yet, certain Individual Defendants party to the  
25 WaMu Executive Officer Severance Plan have disputed the applicability of the Golden  
26 Parachute Regulations and continue to seek payments pursuant to the WaMu Executive  
Officer Severance Plan in Bankruptcy Court.

1           247. On or around September 18, 2008, WMB experienced a Distress Event  
2 when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>33</sup> See 12  
3 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

4           248. Shortly thereafter, on September 25, 2008, WMB experienced another  
5 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
6 FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
7 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
8 pursuant to the Purchase and Assumption Agreement.

9           249. The following day, on September 26, 2008, each of the Debtors  
10 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
11 Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

12           250. As defined by the Golden Parachute Regulations, WMB was an  
13 insured depository institution, and WMI was its affiliated depository institution holding  
14 company at the time the Individual Defendants' claims are alleged to have arisen. See 12  
15 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
16 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
17 payment made by WMILT pursuant to the WaMu Executive Officer Severance Plan to any  
18 Individual Defendant named in Count VII would constitute a payment in the nature of  
19 compensation by an insured depository institution and/or an affiliated depository institution  
20 holding company. See FDIC Determination (a copy of which is annexed as **Exhibit B**).

21           251. Each Individual Defendant named in Count VII is a former employee  
22 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
23 Count VII is an IAP within the meaning of 12 C.F.R. § 359.1(h). See 12 C.F.R. § 359.1(h).

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<sup>33</sup> See *supra* at paragraphs 161-62.

1 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the  
2 WaMu Executive Officer Severance Plan would be for the benefit of a former IAP.

3 252. By the terms of the WaMu Executive Officer Severance Plan, payment  
4 pursuant to such agreements is contingent on and/or payable on or after the termination of  
5 each respective Individual Defendant's primary employment with WMB and/or WMI, as  
6 applicable.

7 253. In their Employee Claims, the Individual Defendants have alleged that  
8 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
9 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
10 applicable, was terminated in connection with, and at a time when the applicable entity  
11 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the WaMu  
12 Executive Officer Severance Plan would necessarily be received on or after a Distress Event,  
13 including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

14 254. Declaratory relief is necessary because, although the FDIC has  
15 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
16 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
17 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
18 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
19 payments pursuant to any of the agreements or plans at issue without prior regulatory  
20 approval may be subject to civil money penalties.

21 255. WMILT requests a declaratory judgment that:

- 22 (a) any payments made by WMILT to the above-named Individual  
23 Defendants pursuant to the WaMu Executive Officer  
24 Severance Plan are subject to the Golden Parachute  
25 Regulations;  
26 (b) WMILT is prohibited from making such payments absent  
regulatory approval from the FDIC and FRB; and  
(c) the Individual Defendants are prohibiting from receiving such  
payments from WMILT absent regulatory approval from the  
FDIC and FRB.

**COUNT VIII**

*(As to Defendants: the FDIC, the FRB, and John Michael Browning)*

**Declaratory Judgment that Any Payments Made by WMILT to Defendant John Michael Browning Pursuant to the Confidential Executive Separation Agreement Are Subject to the Golden Parachute Regulations**

256. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

257. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the Confidential Executive Separation Agreement are subject to the Golden Parachute Regulations and WMILT is prohibited from making such payments without prior regulatory approval; yet, the Individual Defendant with the Confidential Executive Separation Agreement has disputed the applicability of the Golden Parachute Regulations and continues to seek payments pursuant to the Confidential Executive Separation Agreement in Bankruptcy Court.

258. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>34</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

259. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

260. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

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<sup>34</sup> See *supra* at paragraphs 161-62.

261. As defined by the Golden Parachute Regulations, WMB was an insured depository institution, and WMI was its affiliated depository institution holding company at the time the Individual Defendant's claims are alleged to have arisen. *See* 12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any payment made by WMILT pursuant to the Confidential Executive Separation Agreement to the Individual Defendant named in Count VIII would constitute a payment in the nature of compensation by an insured depository institution and/or an affiliated depository institution holding company. *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

262. The Individual Defendant named in Count VIII is a former employee and/or officer of WMB. Thus, the Individual Defendant named in Count VIII is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h). Therefore, any payments made by WMILT to the Individual Defendant pursuant to the Confidential Executive Separation Agreement would be for the benefit of a former IAP.

263. By the terms of the Confidential Executive Separation Agreement, payment pursuant to such agreement is contingent on and/or payable on or after the termination of the respective Individual Defendant's primary employment with WMB.

264. In their Employee Claims, the Individual Defendants have alleged that they were terminated as a result of one or more of the Distress Events. In fact, each of the Individual Defendants' employment relationship or affiliation with WMI or WMB, as applicable, was terminated in connection with, and at a time when the applicable entity satisfied one or more of the Distress Events. Thus, any payment made pursuant to the Confidential Executive Separation Agreement would necessarily be received on or after a Distress Event, including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.



1           265. Declaratory relief is necessary because, although the FDIC has  
2 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
3 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
4 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
5 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
6 payments pursuant to any of the agreements or plans at issue without prior regulatory  
7 approval may be subject to civil money penalties.

8           266. WMILT requests a declaratory judgment that:

- 9                   (a) any payments made by WMILT to the above-named Individual  
10                   Defendant pursuant to the Confidential Executive Separation  
11                   Agreement are subject to the Golden Parachute Regulations;  
12                   (b) WMILT is prohibited from making such payments absent  
13                   regulatory approval from the FDIC and FRB; and  
14                   (c) the Individual Defendant is prohibited from receiving such  
15                   payments from WMILT absent regulatory approval from the  
16                   FDIC and FRB.

### 14                   COUNT IX

15           *(As to Defendants: the FDIC, the FRB, Mary Beth Davis, Michele S. Grau-Iversen, Robert C.*  
16           *Hill, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Richard Strauch, David A. Tomlinson,*  
17           *and Stephen E. Whittaker)*

### 18           **Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants** 19           **Pursuant to the Providian Agreements Are Subject to the Golden Parachute** 20           **Regulations**

21           267. Plaintiff, WMILT, incorporates by reference the allegations of  
22 paragraphs 1 through 178 of the Complaint as if set forth herein.

23           268. An actual controversy exists between the parties as any payments  
24 made pursuant to the Providian Agreements are subject to the Golden Parachute Regulations  
25 and WMILT is prohibited from making such payments without prior regulatory approval;  
26 yet, certain Individual Defendants with Providian Agreements have disputed the applicability

1 of the Golden Parachute Regulations and continue to seek payments pursuant to the  
2 Providian Agreements in Bankruptcy Court.

3 269. On or around September 18, 2008, WMB experienced a Distress Event  
4 when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>35</sup> See 12  
5 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

6 270. Shortly thereafter, on September 25, 2008, WMB experienced another  
7 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
8 FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
9 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
10 pursuant to the Purchase and Assumption Agreement.

11 271. The following day, on September 26, 2008, each of the Debtors  
12 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
13 Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

14 272. As defined by the Golden Parachute Regulations, WMB was an  
15 insured depository institution, and WMI was its affiliated depository institution holding  
16 company at the time the Individual Defendants' claims are alleged to have arisen. See 12  
17 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
18 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
19 payment made by WMILT pursuant to the various Providian Agreements to any Individual  
20 Defendant named in Count IX would constitute a payment in the nature of compensation by  
21 an insured depository institution and/or an affiliated depository institution holding company.  
22 See FDIC Determination (a copy of which is annexed as **Exhibit B**).

23 273. Each Individual Defendant named in Count IX is a former employee  
24 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
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26 <sup>35</sup> See *supra* at paragraphs 161-62.

1 Count IX is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
2 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the  
3 Providian Agreements would be for the benefit of a former IAP.

4 274. By the terms of the Providian Agreements, payment pursuant to such  
5 agreements is contingent on and/or payable on or after the termination of each respective  
6 Individual Defendant's primary employment with WMB and/or WMI, as applicable.

7 275. In their Employee Claims, the Individual Defendants have alleged that  
8 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
9 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
10 applicable, was terminated in connection with, and at a time when the applicable entity  
11 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the  
12 Providian Agreements would necessarily be received on or after a Distress Event, including,  
13 but not limited to, the Bank Seizure and WMI's bankruptcy petition.

14 276. Declaratory relief is necessary because, although the FDIC has  
15 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
16 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
17 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
18 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
19 payments pursuant to any of the agreements or plans at issue without prior regulatory  
20 approval may be subject to civil money penalties.

21 277. WMILT requests a declaratory judgment that:

- 22 (a) any payments made by WMILT to the above-named Individual  
23 Defendants pursuant to the Providian Agreements are subject  
24 to the Golden Parachute Regulations;  
25 (b) WMILT is prohibited from making such payments absent  
26 regulatory approval from the FDIC and FRB; and  
(c) The Individual Defendants are prohibited receiving such  
payments from WMILT absent regulatory approval from the  
FDIC and FRB.

**COUNT X**

*(As to Defendants: the FDIC, the FRB, and Stephen J. Rotella)*

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendant Stephen J. Rotella Pursuant to the Rotella CIC Agreement on Account of Alternate or Contingent Claims Are Subject to the Golden Parachute Regulations**

278. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

279. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the WMB CIC Agreements are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, Defendant Rotella continues to seek payments pursuant to the Rotella CIC Agreement in Bankruptcy Court.<sup>36</sup>

280. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>37</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

281. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

282. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

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<sup>36</sup> The Rotella CIC Agreement contains the same definition of “change in control” as contained in the WMB CIC Agreements and is otherwise substantively similar in all relevant respects.

<sup>37</sup> See *supra* at paragraphs 161-62.

1           283. As defined by the Golden Parachute Regulations, WMB was an  
2 insured depository institution, and WMI was its affiliated depository institution holding  
3 company at the time Defendant Rotella's claims is alleged to have arisen. *See* 12 C.F.R. §§  
4 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest thereto, are  
5 subject to the restrictions of the Golden Parachute Regulations. Specifically, any payment  
6 made by WMILT pursuant to the Rotella CIC Agreement to Defendant Rotella would  
7 constitute a payment in the nature of compensation by an insured depository institution  
8 and/or an affiliated depository institution holding company. *See* FDIC Determination (a  
9 copy of which is annexed as **Exhibit B**).

10           284. Defendant Rotella is a former employee and officer of WMB. Thus,  
11 Defendant Rotella is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R.  
12 § 359.1(h). Therefore, any payments made by WMILT to Defendant Rotella pursuant to the  
13 Rotella CIC Agreement would be for the benefit of a former IAP.

14           285. By the terms of the Rotella CIC Agreement, payment pursuant to such  
15 agreement is contingent on and/or payable on or after the termination of Defendant Rotella's  
16 primary employment with WMI.

17           286. Defendant Rotella has alleged that he was terminated in connection  
18 with one or more of the Distress Events. In fact, Defendant Rotella's employment  
19 relationship or affiliation with WMI or WMB, as applicable, was terminated in connection  
20 with, and at a time when the applicable entity satisfied one or more of the Distress Events.  
21 Thus, any payment made pursuant to the Rotella CIC Agreement would necessarily be  
22 received on or after a Distress Event, including, but not limited to, the Bank Seizure and  
23 WMI's bankruptcy petition.

24           287. Declaratory relief is necessary because, although the FDIC has  
25 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
26 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute

1 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
2 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
3 payments pursuant to any of the agreements or plans at issue without prior regulatory  
4 approval may be subject to civil money penalties.

5 288. WMILT requests a declaratory judgment that:

- 6 (a) any payments made by WMILT to the above-named Individual  
7 Defendant pursuant to the Rotella CIC Agreement are subject  
8 to the Golden Parachute Regulations;  
9 (b) WMILT is prohibited from making such payments absent  
10 regulatory approval from the FDIC and FRB; and  
11 (c) Defendant Rotella is prohibited from receiving such payments  
12 from WMILT absent regulatory approval from the FDIC and  
13 FRB.

#### 14 **COUNT XI**

15 *(As to Defendants: the FDIC, the FRB, and Gary P. Brady)*

#### 16 **Declaratory Judgment that Any Payments Made by WMILT to Individual Defendant 17 Gary P. Brady Pursuant to the Change in Control Terms of the Deferred Signing Bonus 18 Within the Brady Offer Letter Are Subject to the Golden Parachute Regulations**

19 289. Plaintiff, WMILT, incorporates by reference the allegations of  
20 paragraphs 1 through 178 of the Complaint as if set forth herein.

21 290. An actual controversy exists between the parties as the FDIC has  
22 determined that any payments made pursuant to the WMB CIC Agreements are subject to the  
23 Golden Parachute Regulations and that WMILT is prohibited from making such payments  
24 without prior regulatory approval. Yet, Defendant Brady continues to seek payments  
25 pursuant to the Brady Offer Letter, which incorporates the prohibited WMB CIC Agreement  
26 language, in Bankruptcy Court.<sup>38</sup>

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<sup>38</sup> The Brady Offer Letter explicitly incorporates the same definition of “change in control” as contained in the WMB CIC Agreements.

1                   291. On or around September 18, 2008, WMB experienced a Distress Event  
2 when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>39</sup> See 12  
3 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

4                   292. Shortly thereafter, on September 25, 2008, WMB experienced another  
5 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
6 FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
7 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
8 pursuant to the Purchase and Assumption Agreement.

9                   293. The following day, on September 26, 2008, each of the Debtors  
10 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
11 Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

12                   294. As defined by the Golden Parachute Regulations, WMB was an  
13 insured depository institution, and WMI was its affiliated depository institution holding  
14 company at the time Defendant Brady's claims is alleged to have arisen. See 12 C.F.R. §§  
15 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest thereto, are  
16 subject to the restrictions of the Golden Parachute Regulations. Specifically, any payment  
17 made by WMILT pursuant to the Brady Offer Letter to Defendant Brady would constitute a  
18 payment in the nature of compensation by an insured depository institution and/or an  
19 affiliated depository institution holding company. See FDIC Determination (a copy of which  
20 is annexed as **Exhibit B**).

21                   295. Defendant Brady is a former employee of WMB. Thus, Defendant  
22 Brady is an IAP within the meaning of 12 C.F.R. § 359.1(h). See 12 C.F.R. § 359.1(h).  
23 Therefore, any payments made by WMILT to Defendant Brady pursuant to the Brady Offer  
24 Letter would be for the benefit of a former IAP.

25  
26 

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<sup>39</sup> See *supra* at paragraphs 161-62.



1           296. By the terms of the Brady Offer Letter, payment pursuant to such  
2 agreement is contingent on and/or payable on or after the termination of Defendant Brady's  
3 primary employment with WMB.

4           297. Defendant Brady has alleged that he was terminated in connection  
5 with one or more of the Distress Events. In fact, Defendant Brady's employment relationship  
6 or affiliation with WMI or WMB, as applicable, was terminated in connection with, and at a  
7 time when the applicable entity satisfied one or more of the Distress Events. Thus, any  
8 payment made pursuant to the Brady Offer Letter would necessarily be received on or after a  
9 Distress Event, including, but not limited to, the Bank Seizure and WMI's bankruptcy  
10 petition.

11           298. Declaratory relief is necessary because, although the FDIC has  
12 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
13 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
14 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
15 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
16 payments pursuant to any of the agreements or plans at issue without prior regulatory  
17 approval may be subject to civil money penalties.

18           299. WMILT requests a declaratory judgment that:

- 19           (a) any payments made by WMILT to the above-named Individual  
20 Defendant pursuant to the Brady Offer Letter are subject to the  
21 Golden Parachute Regulations;  
22           (b) WMILT is prohibited from making such payments absent  
23 regulatory approval from the FDIC and FRB; and  
24           (c) Defendant Brady is prohibited from receiving such payments  
25 from WMILT absent regulatory approval from the FDIC and  
26 FRB.

**COUNT XII**

*(As to Defendants: the FDIC, the FRB, Susan C. Allison, Edward F. Bach, Melba Ann Bartels, Robert N. Batt, Sean Beckett, Henry J. Berens, Bruce W. Bivert, Anthony Joseph Bozzuti, Curt Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan Carlisle, Gennadiy Darakhovskiy, Mary Beth Davis, Andrew J. Eschenbach, William Finzer, Stephen Fortunato, Brian T. Foster, Keith O. Fukui, Matthew Gaspard, Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Randy Melby, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Januelin F. Schrag, Patricia Schulte, Chandan Sharma, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Mitchell Stevens, Richard Strauch, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, David A. Tomlinson, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, and Michael R. Zarro)*

**Declaratory Judgment that the WMB CIC Agreement was Automatically Terminated Pursuant to 12 C.F.R. § 163.39**

300. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

301. An actual controversy exists between WMILT and the Individual Defendants listed in Count XII as the United States Court of Appeals for the Ninth Circuit and the FDIC have already determined that the WMB CIC Agreements automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual Defendants continue to maintain that WMILT is liable for the obligations thereunder.

302. WMB was a federal savings association chartered pursuant to the Home Owners' Loan Act, 12 U.S.C. §§ 1461-70, and as such, was subject to the regulations issued thereunder, including 12 C.F.R. § 163.39.

303. The Individual Defendants named in Count XII are former employees of WMB and each entered into a WMB CIC Agreement.

304. The WMB CIC Agreements set forth the material terms and conditions of each Individual Defendants' employment, and therefore, are employment contracts for the

1 purposes of 12 C.F.R. § 163.39(b), as that term is defined in the OTS Examination  
2 Handbook, § 310.44.

3 305. On September 25, 2008, by order number 2008-36, the director of the  
4 OTS determined, among other things, that WMB was “in an unsafe or unsound condition to  
5 transact business” and accordingly appointed the FDIC Receiver as receiver for WMB. As a  
6 result of the Bank Seizure on September 25, 2008, WMB was in default, as that term is  
7 defined in section 3(x)(1) of the FDIA.

8 306. As a result of the default, the WMB CIC Agreements entered into  
9 between WMB and the Individual Defendants listed in Count XII automatically terminated  
10 on September 25, 2008.

11 307. WMILT requests a declaratory judgment that:

- 12 (a) the WMB CIC Agreements automatically terminated on  
13 September 25, 2008; and  
14 (b) WMILT is not liable for any obligations arising thereunder.

### 15 **COUNT XIII**

16 *(As to Defendants: the FDIC, the FRB, Edward F. Bach, Melba Ann Bartels, Henry J.*  
17 *Berens, Bruce W. Bivert, Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan,*  
18 *Curt Brouwer, Kimberly A. Cannon, Mary Beth Davis, Jake D. Domer, William Finzer,*  
19 *Brian T. Foster, Peter Freiling, Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones,*  
20 *Kenneth E. Kido, Michelle McCarthy, Susan McCarthy, Rachelle M. Mileur, Thomas E.*  
21 *Morgan, Casey Nault, Michael Reynoldson, Patricia Roberts, Chandan Sharma, Genevieve*  
22 *Smith, Jacob E. Sorenson, Steven F. Stein, Richard Strauch, Jane Suchan, David A.*  
23 *Tomlinson, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, John F. Woods, Weijia*  
24 *Wu, and Michael R. Zarro)*

#### 25 **Declaratory Judgment that the WMB Retention Bonus Agreements Were** 26 **Automatically Terminated Pursuant to 12 C.F.R. § 163.39**

308. Plaintiff, WMILT, incorporates by reference the allegations of  
paragraphs 1 through 178 of the Complaint as if set forth herein.

309. An actual controversy exists between WMILT and the Individual  
Defendants listed in Count XIII as the United States Court of Appeals for the Ninth Circuit

1 and the FDIC have already determined that the WMB Retention Bonus Agreements  
2 automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the  
3 above-named Individual Defendants continue to maintain that WMILT is liable for the  
4 obligations thereunder.

5 310. WMB was a federal savings association chartered pursuant to the  
6 Home Owners' Loan Act, 12 U.S.C. §§ 1461-70, and as such, was subject to the regulations  
7 issued thereunder, including 12 C.F.R. § 163.39.

8 311. The Individual Defendants named in Count XIII are former employees  
9 of WMB and each entered into a WMB Retention Bonus Agreement.

10 312. Each WMB Retention Bonus Agreement sets forth the material terms  
11 and conditions of each Individual Defendants' employment, and therefore, are employment  
12 contracts for the purposes of 12 C.F.R. § 163.39(b), as that term is defined in the OTS  
13 Examination Handbook, § 310.44.

14 313. On September 25, 2008, by order number 2008-36, the director of the  
15 OTS determined, among other things, that WMB was "in an unsafe or unsound condition to  
16 transact business" and accordingly appointed the FDIC Receiver as receiver for WMB. As a  
17 result of the Bank Seizure on September 25, 2008, WMB was in default, as that term is  
18 defined in section 3(x)(1) of the FDIA.

19 314. As a result of the default, the WMB Retention Bonus Agreements  
20 entered into between WMB and the Individual Defendants listed in Count XIII automatically  
21 terminated on September 25, 2008.

22 315. WMILT requests a declaratory judgment that:

- 23 (a) the WMB Retention Bonus Agreements automatically  
24 terminated on September 25, 2008; and  
25 (b) WMILT is not liable for any obligations arising thereunder.  
26

**COUNT XIV**

*(As to Defendants: the FDIC, the FRB, Susan C. Allison, Sean Beckett, Henry J. Berens, Robert C. Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Kimberly A. Cannon, Mary Beth Davis, Duane Duck, Camille Everett, Michele S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor, Marc Malone, Thomas E. Morgan, John H. Murphy, Casey Nault, Michael Reynoldson, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Chandan Sharma, Scott Shaw, Genevieve Smith, Richard Strauch, Radha Thompson, Ann Tierney, David A. Tomlinson, Stephen E. Whittaker, Weijia Wu, and Michael R. Zarro)*

**Declaratory Judgment that the WaMu Severance Plan was Automatically Terminated Pursuant to 12 C.F.R. § 163.39**

316. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

317. An actual controversy exists between WMILT and the Individual Defendants listed in Count XIV as the United States Court of Appeals for the Ninth Circuit and the FDIC have already determined that the WaMu Severance Plan automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual Defendants continue to maintain that WMILT is liable for the obligations thereunder.

318. WMB was a federal savings association chartered pursuant to the Home Owners' Loan Act, 12 U.S.C. §§ 1461-70, and as such, was subject to the regulations issued thereunder, including 12 C.F.R. § 163.39.

319. The Individual Defendants named in Count XIV are former employees of WMB and each entered into a WaMu Severance Plan.

320. The WaMu Severance Plan sets forth the material terms and conditions of each Individual Defendants' employment, and therefore, are employment contracts for the purposes of 12 C.F.R. § 163.39(b), as that term is defined in the OTS Examination Handbook, § 310.44.

1                   321. On September 25, 2008, by order number 2008-36, the director of the  
2                   OTS determined, among other things, that WMB was “in an unsafe or unsound condition to  
3                   transact business” and accordingly appointed the FDIC Receiver as receiver for WMB. As a  
4                   result of the Bank Seizure on September 25, 2008, WMB was in default, as that term is  
5                   defined in section 3(x)(1) of the FDIA.

6                   322. As a result of the default, the WaMu Severance Plan entered into  
7                   between WMB and the Individual Defendants listed in Count XIV automatically terminated  
8                   on September 25, 2008.

9                   323. WMILT requests a declaratory judgment that:

- 10                   (a) the WaMu Severance Plan automatically terminated on  
11                   September 25, 2008; and  
12                   (b) WMILT is not liable for any obligations arising thereunder.

### 13                   COUNT XV

14                   *(As to Defendants: the FDIC, the FRB, Robert C. Boxberger, Mary Beth Davis, Michele S.*  
15                   *Grau-Iversen, Robert C. Hill, Robert G. Merritt, Michael Rapaport, Laura C. Rogers*  
16                   *Rodrigues, Luis P. Rodriguez, Daniel Shanks, Richard Strauch, Jose O. N. Tagunicar, David*  
17                   *A. Tomlinson, John Webber, Stephen E. Whittaker, and Kathy H. Yeu)*

### 18                   **Declaratory Judgment that the Providian Agreements Were Automatically Terminated** 19                   **Pursuant to 12 C.F.R. § 163.39**

20                   324. Plaintiff, WMILT, incorporates by reference the allegations of  
21                   paragraphs 1 through 178 of the Complaint as if set forth herein.

22                   325. An actual controversy exists between WMILT and the Individual  
23                   Defendants listed in Count XV as the Providian Agreements automatically terminated on  
24                   September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual  
25                   Defendants continue to maintain that WMILT is liable for the obligations thereunder.

26                   326. WMB was a federal savings association chartered pursuant to the  
Home Owners’ Loan Act, 12 U.S.C. §§ 1461-70, and as such, was subject to the regulations  
issued thereunder, including 12 C.F.R. § 163.39.

1           327. The Individual Defendants named in Count XV are former employees  
2 of WMB and each entered into a Providian Agreement.

3           328. The Providian Agreements set forth the material terms and conditions  
4 of each Individual Defendants' employment, and therefore, are employment contracts for the  
5 purposes of 12 C.F.R. § 163.39(b), as that term is defined in the OTS Examination  
6 Handbook, § 310.44.

7           329. On September 25, 2008, by order number 2008-36, the director of the  
8 OTS determined, among other things, that WMB was "in an unsafe or unsound condition to  
9 transact business" and accordingly appointed the FDIC Receiver as receiver for WMB. As a  
10 result of the Bank Seizure on September 25, 2008, WMB was in default, as that term is  
11 defined in section 3(x)(1) of the FDIA.

12           330. As a result of the default, the Providian Agreements entered into  
13 between WMB and the Individual Defendants listed in Count XV automatically terminated  
14 on September 25, 2008.

15           331. WMILT requests a declaratory judgment that:

- 16                   (a) the Providian Agreements automatically terminated on  
17                   September 25, 2008; and  
18                   (b) WMILT is not liable for any obligations arising thereunder.

## 19                                   **COUNT XVI**

20                           *(As to Defendants: the FDIC, the FRB, and Gary P. Brady)*

### 21                   **Declaratory Judgment that the Deferred Signing Bonus Automatically Terminated** 22                   **Pursuant to 12 C.F.R. § 163.39**

23           332. Plaintiff, WMILT, incorporates by reference the allegations of  
24 paragraphs 1 through 178 of the Complaint as if set forth herein.

25           333. An actual controversy exists between WMILT and the Individual  
26 Defendant listed in Count XVI as the deferred signing bonus within the Brady Offer Letter



1 automatically terminated on September 25, 2008 as a result of the Bank Seizure. Yet, the  
2 above-named Individual Defendant continues to maintain that WMILT is liable for the  
3 obligations thereunder.

4 334. WMB was a federal savings association chartered pursuant to the  
5 Home Owners' Loan Act, 12 U.S.C. §§ 1461-70, and as such, was subject to the regulations  
6 issued thereunder, including 12 C.F.R. § 163.39.

7 335. The Individual Defendant named in Count XVI is a former employee  
8 of WMB and entered into an employment agreement.

9 336. The Brady Offer Letter sets forth the material terms and conditions of  
10 the Individual Defendant's employment, and therefore, is an employment contract for the  
11 purposes of 12 C.F.R. § 163.39(b), as that term is defined in the OTS Examination  
12 Handbook, § 310.44.

13 337. On September 25, 2008, by order number 2008-36, the director of the  
14 OTS determined, among other things, that WMB was "in an unsafe or unsound condition to  
15 transact business" and accordingly appointed the FDIC Receiver as receiver for WMB. As a  
16 result of the Bank Seizure on September 25, 2008, WMB was in default, as that term is  
17 defined in section 3(x)(1) of the FDIA.

18 338. As a result of the default, the WMB CIC Agreements entered into  
19 between WMB and the Individual Defendant listed in Count XVI automatically terminated  
20 on September 25, 2008.

21 339. WMILT requests a declaratory judgment that:

- 22 (a) the deferred signing bonus within the Brady Offer Letter  
23 automatically terminated on September 25, 2008; and  
24 (b) WMILT is not liable for any obligations arising thereunder.

**COUNT XVII**

(As to Defendants: the FDIC, the FRB Robert N. Batt, Sean Beckett, Mary Beth Davis, Brian T. Foster, Keith O. Fukui, Michelle S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor, Kenneth E. Kido, Ronald M. Lowery, Randy Melby, Michelle McCarthy, John H. Murphy, Janquelin F. Schrag, Jacob E. Sorensen, Mitchell Stevens, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, Bruce Weber, Jeffrey P. Weinstein, and Stephen E. Whittaker)

**Declaratory Judgment that the Individual Defendants Listed in Count XV Are Barred by the Doctrines of *Res Judicata* and Collateral Estoppel from Asserting Claims Based on the WMB CIC Agreement Against WMILT**

340. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

341. An actual controversy exists between WMILT and the Individual Defendants listed in Count XVII as the United States Court of Appeals for the Ninth Circuit has already determined that the WMB CIC Agreement automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above named Individual Defendants continue to maintain that WMILT is liable for the obligations thereunder.

342. The Individual Defendants named in Count XVII filed administrative claims with the FDIC Receiver seeking payments allegedly owed under the WMB CIC Agreement. After the FDIC Receiver denied the administrative claims, the Individual Defendants named in Count XVII appealed to the Western District of Washington (the “Williams Action”). *See Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011), *aff’d*, 492 Fed. App’x. 796 (9th Cir. 2012). The FDIC Receiver filed a motion to dismiss the Williams Action by asserting that the “Automatic Termination Regulation” rendered the various employment contracts unenforceable against the FDIC Receiver.

343. On August 30, 2011, the Western District Court of Washington granted the FDIC Receiver’s motion to dismiss, and the decision was upheld on appeal to the United States Court of Appeals for the Ninth Circuit. *See Williams* 492 Fed. App’x. 796.

344. The Individual Defendants named in Count XVII had a full and fair opportunity in the Williams Action to litigate the issue of whether the WMB CIC Agreement automatically terminated pursuant to 12 C.F.R. § 163.39.

345. The issue of whether the WMB CIC Agreement automatically terminated pursuant to 12 C.F.R. § 163.39 was actually litigated in the Williams Action.

346. The Individual Defendants named in Count XVII lost the issue as a result of a final judgment in the Williams Action.

347. The Individual Defendants named in Count XVII was a party in the Williams Action.

348. WMILT requests a declaratory judgment that:

- (a) the above-named Individual Defendants are barred by the doctrines of *res judicata* and collateral estoppel from asserting claims based on the WMB CIC Agreement against WMILT; and
- (b) WMILT is not liable for any obligations arising thereunder.

**COUNT XVIII**

(As to Defendants: the FDIC, the FRB, Sean Beckett, Robert C. Bjorklund, Mary Beth Davis, Camille Everett, Michelle S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor, John H. Murphy, Scott Shaw, Radha Thompson, Ann Tierney, and Stephen E. Whittaker)

## **Declaratory Judgment that the Individual Defendants Listed in Count XVI Are Barred by the Doctrines of *Res Judicata* and Collateral Estoppel from Asserting Claims Based on the WaMu Severance Plan Against WMILT**

349. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

350. An actual controversy exists between WMILT and the Individual Defendants listed in Count XVIII as the United States Court of Appeals for the Ninth Circuit has already determined that the WaMu Severance Plan automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual Defendants continue to maintain that WMILT is liable for the obligations thereunder.

1           351. The Individual Defendants named in Count XVIII filed administrative  
2 claims with the FDIC Receiver seeking payments allegedly owed under the WaMu  
3 Severance Plan. After the FDIC Receiver denied the administrative claims, the Individual  
4 Defendants named in Count XVIII appealed to the Western District of Washington. *See*  
5 *Williams v. FDIC*, 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011), *aff'd*, 492 Fed. App'x. 796  
6 (9th Cir. 2012). The FDIC Receiver filed a motion to dismiss the Williams Action by  
7 asserting that the "Automatic Termination Regulation" rendered the various employment  
8 contracts unenforceable against the FDIC Receiver.

9           352. On August 30, 2011, the Western District Court of Washington  
10 granted the FDIC Receiver's motion to dismiss, and the decision was upheld on appeal to the  
11 United States Court of Appeals for the Ninth Circuit. *See Williams*, 492 Fed. App'x. 796.

12           353. The Individual Defendants named in Count XVIII had a full and fair  
13 opportunity to litigate the issue of whether the WaMu Severance Plan automatically  
14 terminated pursuant to 12 C.F.R. § 163.39 in the Williams Action.

15           354. The issue of whether the WaMu Severance Plan automatically  
16 terminated pursuant to 12 C.F.R. § 163.39 was actually litigated in the Williams Action.

17           355. The Individual Defendants named in Count XVIII lost the issue as a  
18 result of a final judgment in the Williams Action.

19           356. The Individual Defendants named in Count XVIII was a party in the  
20 Williams Action.

21           357. WMILT requests a declaratory judgment that:

- 22           (a) the above-named Individual Defendants are barred by the  
23 doctrines of *res judicata* and collateral estoppel from asserting  
24 claims based on the WaMu Severance Plan against WMILT;  
25 and  
26           (b) WMILT is not liable for any obligations arising thereunder.

**COUNT XIX**

(As to Defendants: the FDIC, the FRB, Robert C. Bjorklund, Mary Beth Davis, Jake D. Domer, Brian T. Foster, Peter Freilinger, Michelle S. Grau-Iversen, Robert C. Hill, Kenneth E. Kido, Michelle McCarthy, Jacob E. Sorensen, Jane Suchan, Bruce Weber, Jeffrey P. Weinstein, and Stephen E. Whittaker)

**Declaratory Judgment that the Individual Defendants Listed in Count XVII Are Barred by the Doctrines of *Res Judicata* and Collateral Estoppel from Asserting Claims Based on the WMB Retention Bonus Agreement Against WMILT**

358. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 178 of the Complaint as if set forth herein.

359. An actual controversy exists between WMILT and the Individual Defendants listed in Count XIX as the United States Court of Appeals for the Ninth Circuit has already determined that the WMB Retention Bonus Agreement automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual Defendants continue to maintain that WMILT is liable for the obligations thereunder.

360. The Individual Defendants named in Count XIX filed administrative claims with the FDIC Receiver seeking payments allegedly owed under the WMB Retention Bonus Agreement. After the FDIC Receiver denied the administrative claims, the Individual Defendants named in Count XIX appealed to the Western District of Washington. *See Williams v. FDIC*, 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011), *aff'd*, 492 Fed. App'x. 796 (9th Cir. 2012). The FDIC Receiver filed a motion to dismiss the Williams Action by asserting that the "Automatic Termination Regulation" rendered the various employment contracts unenforceable against the FDIC Receiver.

361. On August 30, 2011, the Western District Court of Washington granted the FDIC Receiver's motion to dismiss, and the decision was upheld on appeal to the United States Court of Appeals for the Ninth Circuit. *See Williams*, 492 Fed. App'x. 796.

1           362. The Individual Defendants named in Count XIX had a full and fair  
2 opportunity to litigate the issue of whether the WMB Retention Bonus Agreement  
3 automatically terminated pursuant to 12 C.F.R. § 163.39 in the Williams Action.

4           363. The issue of whether the WMB Retention Bonus Agreement  
5 automatically terminated pursuant to 12 C.F.R. § 163.39 was actually litigated in the  
6 Williams Action.

7           364. The Individual Defendants named in Count XIX lost the issue as a  
8 result of a final judgment in the Williams Action.

9           365. The Individual Defendants named in Count XIX was a party in the  
10 Williams Action.

11           366. WMILT requests a declaratory judgment that:

- 12                   (a) the above-named Individual Defendants are barred by the  
13 doctrines of *res judicata* and collateral estoppel from asserting  
14 claims based on the WMB Retention Bonus Agreement against  
15 WMILT; and  
16                   (b) WMILT is not liable for any obligations arising thereunder.  
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**PRAYER FOR RELIEF**

Plaintiff respectfully requests the Court to grant the following relief:

1. An order declaring that the CIC Agreements, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and that WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
2. An order declaring that the WaMu Severance Plan, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
3. An order declaring that the Retention Bonus Agreements, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
4. An order declaring that the Cash Long Term Incentive Agreements, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
5. An order declaring that the Equity Incentive Plan, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
6. An order declaring that the ETRIP, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
7. An order declaring that the WaMu Executive Officer Severance Plan, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
8. An order declaring that the Confidential Executive Separation Agreement, and any payments made by WMILT to Individual Defendant John Michael Browning pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;



9. An order declaring that the Providian Agreements, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
10. An order declaring that the Stephen J. Rotella WMI CIC Agreement, and any payments made by WMILT to Stephen J. Rotella pursuant thereto, including any alternate or contingent claims, are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
11. An order declaring that the deferred signing bonus within the Brady Offer Letter, and any payments made by WMILT to Gary P. Brady pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
12. An order declaring that the WMB CIC Agreements were automatically terminated on September 25, 2008 by operation of 12 C.F.R. § 163.39;
13. An order declaring that the WMB Retention Bonus Agreements were automatically terminated on September 25, 2008 by operation of 12 C.F.R. § 163.39;
14. An order declaring that the WaMu Severance Plan was automatically terminated on September 25, 2008 by operation of 12 C.F.R. § 163.39;
15. An order declaring that the Providian Agreements were automatically terminated on September 25, 2008 by operation of 12 C.F.R. § 163.39;
16. An order declaring that the deferred signing bonus within the Brady Offer Letter was automatically terminated on September 25, 2008 by operation of 12 C.F.R. § 163.39;
17. An order declaring that the Individual Defendants named in Count XIV are barred by the doctrines of *res judicata* and collateral estoppel from asserting claims against WMILT based on the WMB CIC Agreement;
18. An order declaring that the Individual Defendants named in Count XV are barred by the doctrines of *res judicata* and collateral estoppel from asserting claims against WMILT based on the WaMu Severance Plan;
19. An order declaring that the Individual Defendants named in Count XVI are barred by the doctrines of *res judicata* and collateral estoppel from asserting claims against WMILT based on the WMB Retention Bonus Agreement; and
20. Such other relief as the Court deems just and proper.

**WHEREFORE**, Plaintiff, WMILT, prays that the Court enter judgment on behalf of Plaintiff, WMILT, and against Defendants, the FDIC, the FRB and the Individual Defendants, and award Plaintiff, WMILT, all requested relief.

Dated: Seattle, Washington  
November 5, 2013

By: /s/ Edgar G. Sargent

By: /s/ Justin A. Nelson

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– and –

By: /s/ Brian S. Rosen

By: /s/ John P. Mastando III

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